92-1660

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No. _____

In The

Supreme Court of the United States

October Term, 1992

PATRICK T. MURPHY,
Cook County Public Guardian,

Petitioner,

v.

B.H., *et al.*, by their next friend,
SUSAN TONE PIERCE, individually and on
behalf of all others similarly situated,

and

STERLING M. RYDER, Director of the
Illinois Department of Children and Family Services,

Respondents.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Seventh Circuit erred in applying the party-only appeal rule to deny review, thereby sanctioning the district court's refusal to consider the significant federalism concerns related to the consent decree which settled a class action against the director of Illinois' child welfare agency. These federalism concerns were raised by the state court which has *parens patriae* responsibility for the children affected by the decree, through the attorney and guardian *ad litem* the state court had appointed to represent the children, who was twice denied party status prior to the entry of the decree.

LIST OF PARTIES

The parties to the proceedings below, who are the respondents herein, were Sterling M. Ryder (and his predecessors Sue Suter, Jess McDonald and Gordon Johnson), Director of the Illinois Department of Children and Family Services ("DCFS"), and Susan Tone Pierce, the next friend appointed by the district court for the plaintiff class. The Pierce respondent will be referred to as the American Civil Liberties Union ("ACLU") because it was the ACLU that brought the case below as counsel for a class of abused and neglected children, all of whom are also under the *parens patriae* power of the Illinois courts. Petitioner is the Public Guardian of Cook County, Illinois, who, through 71 lawyers and 25 social workers, represents as attorney and guardian *ad litem*, virtually all abused and neglected children in the largest county in Illinois by virtue of appointment by the state court.

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Petition For A Writ Of Certiorari
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For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner, the Cook County Public Guardian, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered on January 14, 1993.

OPINION BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 984 F.2d 196 and is reprinted in the appendix hereto, *infra* p. 1a.

JURISDICTION

In 1988, the ACLU filed an action on behalf of a class of children who had been adjudicated abused and neglected by the state courts and placed by those state courts under the custody or guardianship of the Illinois Department of Children and Family Services ("DCFS"). The ACLU asserted that various DCFS actions violated the rights of the class to adequate and safe placements under the Fourteenth Amendment, 42 U.S.C. § 1983 and the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 620-28, 670-79(a), and requested declaratory and injunctive relief against the DCFS director. The district court's jurisdiction was based on 28 U.S.C. §§ 1331, 1343, 2201 and 2202. On May 30, 1989, the district court ruled that the ACLU had stated valid claims under the Fourteenth Amendment and under the case plan and case review requirements of the Adoption Assistance and Child Welfare Act.

In August, 1990, the ACLU and DCFS accepted the district court's suggestion that they work toward settlement with the help of court-appointed experts, and settlement proceeded pursuant to Federal Rule of Evidence 706. A consent judgment was entered in this cause on December 20, 1991.

The Cook County Public Guardian, who has been appointed by the state court to represent the vast majority of the class of children whom the ACLU represented in the district court, moved to intervene in this cause on two occasions, in September, 1990, and in April, 1991. The district court denied the September, 1990 motion to intervene on November 17, 1990, and the Public Guardian did not appeal. The district court, and later the United States Court of Appeals for the Seventh Circuit, decided that the Public Guardian moved to intervene in April, 1991 "on essentially the same grounds offered in his first motion." (App. 4a). The district court denied the second motion to intervene, and when the Public Guardian appealed, the Seventh Circuit dismissed that appeal for lack of jurisdiction on July 8, 1991, holding that the Public Guardian should have appealed the first denial in November, 1990. (App. 4a, 5a; the order of the Court of Appeals for the Seventh Circuit is reprinted in the appendix hereto, *infra*. p. 10a).

After the Seventh Circuit dismissed the appeal for want of jurisdiction, and after a proposed consent decree had been distributed, on September 30, 1991, the Presiding Judge of the Juvenile Court of Cook County issued an order "pursuant to its *parens patriae* power, [directing] its appointed attorney and guardian *ad litem* for the wards of [the] court, the Cook County Public Guardian, to ask the Honorable John Grady, of the United States District Court," for specific relief in the decree to alleviate the Presiding Judge's concerns that the decree usurped his legitimate authority. (The Presiding Judge's order is reprinted in the appendix hereto, *infra* p. 13a). In particular, the state court asked the federal court to "[i]nclude a

provision specifying that nothing in the decree is meant to preclude state court judges from exercising their inherent judicial responsibilities over wards of the court as a class or in any other way." Acting pursuant to the directions of the state court, the Public Guardian then filed a Motion to Expand Distribution of Notice and to Request an Evidentiary Hearing and Continuance of the Fairness Hearing (App. 5a, 7a) and presented the Presiding Judge's order to the district court as part of that motion.

The district court entered a consent decree which ignored the state court's federalism concerns. The Public Guardian then appealed the district court orders denying his motions to intervene and also "the district judge's orders entering the consent decree and denying his motions to compel discovery, to expand distribution of notice and to request an evidentiary hearing and continuance of the fairness hearing." (App. 5a). He did not seek to intervene a third time for purposes of appeal.

On January 14, 1993, the United States Court of Appeals for the Seventh Circuit dismissed the petitioner's appeal for lack of jurisdiction "on grounds of untimeliness and because, with respect to the decree, he lacks standing to challenge the district court's rulings." (App. 2a).

The Public Guardian concedes, for purposes of this Petition, that the Seventh Circuit correctly dismissed his appeals of the two motions to intervene. The sole issue before this Court is whether the Public Guardian, as a representative of the *parens patriae* of a majority of the class members, the Circuit Court of Cook County, and as the state court-appointed attorney and guardian *ad litem*

of the children, has standing to challenge the consent decree entered by the district court in spite of the fact that he did not file and lose a third motion to intervene.

This Court's jurisdiction is based on 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

In this case the federal district court ignored serious issues of federalism which were raised by the state court, as *parens patriae* of a majority of children in the plaintiff class, whose rights were profoundly affected by the district court's entry of a consent decree. This case presents the important issue of whether the party-only appeal rule should be applied to deny review to a representative of the state court who, acting pursuant to an order of the state court, seeks to raise serious federalism concerns about a consent decree which adversely affects the *parens patriae* authority of the state courts over the plaintiff class of children, when the nonparty did not move to intervene for a third time for purposes of appealing the consent decree.

Respondent DCFS's interest in silencing the Public Guardian, as voice of the Cook County, Illinois juvenile court, is clear. The Presiding Judge of the Juvenile Court of Cook County, pursuant to his authority as *parens patriae*, had entered a series of orders against the DCFS official whom the state courts appoint as guardian of abused and neglected children who are wards of the court. These orders, which curtailed abuses of power by DCFS and protected the wards of the court, were upheld

by the Illinois appellate courts. *See In re V.H.*, 197 Ill. App. 3d 52, 554 N.E.2d 686, *appeal denied*, 133 Ill. 2d 557, 561 N.E.2d 709 (1990); *In re Lehman*, 186 Ill. App. 3d 592, 542 N.E.2d 754 (1989). Subsequently, DCFS and the ACLU agreed to enter into a consent decree which in part protects DCFS from some systemic suits brought at the direction of the state court judge, as *parens patriae*, or by the children's attorney and guardian *ad litem* appointed by the state court until at least 1999.

The Presiding Judge of the Juvenile Court of Cook County believed that the proposed decree greatly reduced the state court's power to act as *parens patriae* and to enter orders for the protection of the 31,000 children who are the wards of the state court. Thus, after the Seventh Circuit dismissed the Public Guardian's appeal of the denial of his second motion to intervene in July, 1991, the Presiding Judge of the Juvenile Court entered an order directing the Public Guardian to appear before the district court to ask the district court to insure that certain provisions were included in the decree to prevent any limitations on the state court's *parens patriae* authority. Specifically, after a hearing at which both respondents were present and were heard (App. 13a), the state court entered an order

> pursuant to its *parens patriae* power, [directing] its appointed attorney and guardian *ad litem* for the wards of this court, the Cook County Public Guardian, to ask the [United States District Court] to:
>
> A. Include a provision specifying that nothing in the decree is meant to preclude state court judges from exercising their inherent

judicial responsibilities over wards of the court as a class or in any other way.

B. Specify that the consent decree is not meant to preclude the attorney and guardian *ad litem* appointed by the Juvenile Court of Cook County from taking any action which he believes is necessary to protect the interests of his clients against DCFS on an individual, group or class basis, or in any other way.

C. Limit the broad language at pages two, nine and ten, which attempts to summarize the relief in the decree, to clarify that the decree resolves all issues pertaining solely to the internal bureaucracy of DCFS, which are within the executive authority of DCFS, but does not attempt to usurp the authority of the state court to supervise the actions of DCFS, as court-appointed guardian.

D. Clarify that the decree is not meant to limit plaintiffs from seeking systemic relief against DCFS in any state or federal court on issues which are not specifically resolved in the consent decree.

The district court failed to address the Presiding Judge's federalism concerns. Specifically, the district court refused to expand distribution of the notice of settlement, to compel discovery, to conduct an evidentiary hearing or to continue the fairness hearing on the contested consent decree. After the decree was entered without the protections sought by the state court, the petitioner, acting pursuant to the directions given to him by the state court, appealed the district court's order, along with the district court's previous denial of his two

unsuccessful motions to intervene. Despite the serious issues of federalism already ignored by the district court, the Seventh Circuit disposed of the Public Guardian's appeal on jurisdictional grounds, stating that

> because [the Public Guardian] is not a party in this case and has failed to intervene successfully, he has no standing to now challenge the district court's order entering the consent decree or its denial of motions to expand distribution of notice, to compel discovery or to request an evidentiary hearing and a continuance of the fairness hearing.

(App. 7a).

The Presiding Judge of the Juvenile Court of Cook County, Illinois, through the court-appointed attorney and guardian *ad litem*, attempted to raise the questions of federalism which exist because the plaintiff class consists of children who are under the protection of the state court. The district court ignored the concerns by entering the consent decree, seriously undermining state court authority. The Court of Appeals also refused to address this usurpation of state court authority by the federal court by holding that the Public Guardian had no standing to appeal.

Each member of the plaintiff class is a child who has been taken from the custody of his or her parents by order of the state courts of Illinois. The overwhelming majority of these children live in Chicago, and are thus wards of the Circuit Court of Cook County, Illinois. The state courts have placed these children in the care of a state agency, DCFS, pursuant to state law. 750 ILCS 405/2-10, 2-27, formerly Ill. Rev. Stat. ch. 37, pars. 802-10,

802-27. Nevertheless, the state court continues to act as the superior guardian of the children by virtue of its authority as *parens patriae*. The State of Illinois, like other states, has reposed the *parens patriae* power to protect abused and neglected children in its circuit courts.

> The jurisdiction which was exercised in this case stems from the responsibility of government, in its character as *parens patriae*, to care for infants within its jurisdiction and to protect them from neglect, abuse and fraud . . . Historically exercised by courts of chancery . . . it is "of ancient origin" . . . That ancient equitable jurisdiction was codified in our Juvenile Court Act. . . .

People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769, 773, *cert. denied*, 344 U.S. 824 (1952) (internal citations omitted). After due notice and a hearing, in which the children's biological parents were found to have abused or neglected them, the Juvenile Court of Cook County thus became the actual legal parent of the vast majority of the members of the plaintiff class. The state court then entrusted its wards to the care of DCFS. As court-appointed guardian, DCFS is an officer of the state court. *See* 39 Am. Jur. 2d *Guardian and Ward* § 62 (1968). "A guardian appointed by a court of competent jurisdiction is always under the court's control and subject to its direction and supervision . . . The jurisdiction of the court in this respect is exclusive and a continuing one." 39 C.J.S. *Guardian and Ward* § 7 (1976).

The Cook County Public Guardian is appointed by the Chief Judge of the Circuit Court of Cook County and holds office at the pleasure of the Chief Judge. "The trial court appoints [the Public Guardian] to represent persons

who are adjudged to be incompetent because of either age or physical or mental disability. A trial court appoints [the Public Guardian] in a case individually rather than the public guardian's office in general." *Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees*, 229 Ill. App. 3d 180, 593 N.E.2d 922, 924, *appeal denied*, 146 Ill. 2d 624, 602 N.E.2d 448 (1992). The Public Guardian "retains a fiduciary responsibility to all of the wards and he is accountable for every decision made in the office." *Id.*, 593 N.E.2d at 924.

"In the Juvenile Division, [the Public Guardian] represents juveniles in child abuse and neglect matters . . . The trial court appoints [the Public Guardian] to serve as a juvenile's guardian *ad litem* and attorney. . . . " *Id.*, 593 N.E.2d at 925. As the lawyer appointed for the abused and/or neglected child, the Public Guardian makes all litigation decisions for the child. *Id.* Moreover, as guardian *ad litem*, the Public Guardian "acts by the appointment of the court . . . and is subject to the orders and direction of the court. . . . " *Paskewie v. East S. L. & S. R. Co.*, 281 Ill. 385, 117 N.E. 1035, 1036 (1917). His duties toward a child may even encompass action on the child's behalf after a particular case is concluded. *Id.*

Pursuant to his appointment by the state court, acting as the lawyer for the abused and neglected children, the Public Guardian has represented his child-clients in a panoply of state appellate and supreme court cases as well as in actions filed in federal courts, which emanated from his representation of the children in the Juvenile Court. *See, e.g., Suter v. Artist M.*, ___ U.S. ___, 112 S. Ct. 1360 (1992), *rev'g* 917 F.2d 98 (7th Cir. 1990); *In re Dominique F.*, 145 Ill. 2d 311, 583 N.E.2d 555 (1991); *In re J.J.*, 142

Ill. 2d 1, 566 N.E.2d 1345 (1991); *In re M.M.*, 226 Ill. App. 3d 202, 589 N.E.2d 687 (1992), *appeal granted*, 145 Ill. 2d 634, 596 N.E.2d 629; *In re Walter B.*, 227 Ill. App. 3d 746, 592 N.E.2d 274 (1992); *In re B.T.*, 204 Ill. App. 3d 277, 561 N.E.2d 1269 (1990); *K.H. v. Morgan*, 914 F.2d 846 (7th Cir. 1990); *Aristotle P. v. Johnson*, 721 F. Supp. 1002 (N.D. Ill. 1989); *Christina W. and David J. v. Morgan*, No. 88 C 8383 (N.D. Ill.); *Doe v. Lambert*, No. 87 C 8150 (N.D. Ill.).

Although the ACLU represents the Public Guardian's clients in this case, and, as the Public Guardian concedes, his appeals of the denials of intervention were untimely, the Public Guardian's role cannot be discounted. He is the state court-appointed voice for most of the children who make up the class. The Public Guardian, through his 71 assistants and 25 social workers (51 assistants at the time the Public Guardian filed the motion for expanded distribution of notice and to request an evidentiary hearing and continuance of the fairness hearing), represents most of the children in the class on an individual basis in matters related to their care by the state court-appointed guardian – DCFS. Moreover, although the state court appointed DCFS as guardian, the state court retains final control over the child through its *parens patriae* authority.

The Seventh Circuit refused to reach the merits of the state court's federalism concerns, presented through the Public Guardian, about a consent decree which profoundly affects the wards of the state court. By dismissing the case for lack of jurisdiction, the Seventh Circuit avoided the serious questions of federalism presented by

the state court, which can be raised at any time and which demand consideration to insure the proper federal and state balance in the area of child welfare, in which both sovereigns have a significant interest. Relying on two cases which suggest that the Public Guardian should have filed a third motion to intervene for purposes of attacking the consent decree on appeal, the Seventh Circuit erroneously applied the party-only appeal rule to effectively silence the state court's federalism concerns.

REASONS FOR GRANTING THE WRIT

This appeal concerns the federal court's unjustified usurpation of legitimate state court authority through entry of a federal consent decree. On two occasions the district court refused to consider the objections of the attorney and guardian *ad litem* whom the state court appointed to represent the children who are the subject of the consent decree. The state court eventually entered an order specifically directing its appointed guardian *ad litem* and attorney for the children to appear before the district court to ask that court to insure that the *parens patriae* authority of the state court would be protected in the consent decree it was being asked to sanction. Still, the district court ignored the state court's entreaties. The Seventh Circuit likewise ignored the usurpation of legitimate state court authority by the consent decree when it dismissed the Public Guardian's post-judgment appeal on jurisdictional grounds:

> Because [the Public Guardian] is not a party in this case and has failed to intervene successfully, he has no standing to now challenge the district

> court's order entering the consent decree or its denial of motions to expand distribution of notice, to compel discovery or to request an evidentiary hearing and a continuance of the fairness hearing.

(App. 7a).

The opinion below states that because the Public Guardian failed to intervene successfully, he lacked standing to challenge the district court's order entering the consent decree or the district court's denial of his motions to contest the fairness of the proposed consent decree. The Seventh Circuit, relying upon this Court's decisions in *Marino v. Ortiz*, 484 U.S. 301 (1988), and *Karcher v. May*, 484 U.S. 72 (1987), effectively ruled that the Public Guardian, on behalf of the state court, should have sought to intervene on yet a third occasion for purposes of challenging the consent decree on appeal.

Karcher refers to the "general rule that one who is not a party or has not been treated as a party to a judgment has no right to appeal therefrom." *Karcher v. May*, 484 U.S. 72, 77 (1987) (citations omitted). In *Marino*, this Court pointed out that the Second Circuit referred to exceptions to the general rule that may come into play " 'when the non-party has an interest that is affected by the trial court's judgment.' " 484 U.S. at 303 (citing *Hispanic Society of New York City Police Department v. New York City Police Department*, 806 F.2d 1147, 1152 (2d Cir. 1986), *aff'd sub nom. Marino v. Ortiz*, 484 U.S. 301 (1988)). This Court then stated, "We think the better practice is for such a nonparty to seek intervention for purposes of appeal; denials of such motions are, of course, appealable." 484 U.S. at 303 (citation omitted). The Seventh Circuit has taken this sentence by the Court as a license to eliminate

the longstanding exceptions to the party-only appeal rule. Yet the question remains whether it is proper to ignore the serious issues of federalism and to foreclose the nonparty from litigating on behalf of his child-clients just because he did not follow the "better practice" of futilely seeking to intervene for the third time. The question of the continuing viability of the longstanding exceptions to the party-only appeal rule must be resolved by this Court to permit a review of the federal court's unjustified usurpation of state court authority by entry of a consent decree. This case presents to this Court the important question of whether the "general rule" against nonparty appeals must give way when a nonparty will be adversely affected by a federal consent decree, which unjustly usurps legitimate state court authority. By strictly applying the party-only appeal rule and ignoring its longstanding exceptions, the Seventh Circuit, like the district court, was able to use a technicality to avoid considering the difficult, delicate balance that must be maintained when a federal court becomes involved in a State's child welfare system.

I.

SUPREME COURT REVIEW IS NECESSARY TO CORRECT THE LOWER COURTS' EGREGIOUS FAILURE TO CONSIDER THE STATE COURT'S CONCERNS ABOUT A FEDERAL CONSENT DECREE WHICH USURPS THE STATE COURT'S POWER TO PROTECT THOUSANDS OF CHILDREN WHO ARE UNDER THE STATE COURT'S JURISDICTION.

The state and the federal governments both have a profound interest in the care and protection of children.

However, state courts are primarily responsible for deciding whether children have been abused or neglected, whether they can safely remain in the custody of their parents, and if not, who should be appointed as guardian to protect them. In Illinois, state courts usually appoint an employee of the state Department of Children and Family Services as temporary custodian and then as guardian of children whose parents have abused or neglected them.

The state court, in its role as *parens patriae*, retains responsibility as superior guardian to insure that the guardian protects the children whom the court committed to its care. The guardian is an officer of the state court, and is always under its supervision and control. Thus, the delicate balance between federal and state relations is seriously compromised when the guardian appointed by the state court enters into a federal consent decree with the children who are wards of the state court over the objection of the state court. Nevertheless, the federal courts at both the trial and appellate levels in this case refused to consider the state court's concerns, which were presented to the federal court by express order of the state court.

The vast majority of abused and neglected children in Illinois are adjudicated as such by the Cook County Juvenile Court pursuant to state law. In most cases, that court has appointed the Public Guardian of Cook County to act as guardian *ad litem* and attorney to make litigation decisions for the children. The Public Guardian serves pursuant to appointment of the Chief Judge of the Circuit Court of Cook County.

All of the members of the plaintiff class are children and most of them are infants and very young children. After the state court removed them from the custody of their parents, three entities were authorized to voice the interests of the members of the plaintiff class. The first is the state court which, pursuant to its *parens patriae* authority, acts as the ultimate guardian of the children. The second is the court-appointed guardian *ad litem* and attorney for the children, who, for most members of the plaintiff class, is the Cook County Public Guardian. The third entity is the children's state court-appointed guardian, DCFS. However, DCFS's voice cannot speak on behalf of the children in the federal court proceeding, because the director of DCFS was the defendant who was charged with violating their civil rights. The decisions of the federal courts to ignore the voices of the other two entities violated the most cherished principles of federalism. Further, the entry of a consent decree without the protections suggested by the state court set up a dangerous precedent whereby federal courts effectively become, particularly in post-adjudication matters, "super juvenile courts".

Federalism means federal intrusion on state sovereignty in the form of federal judicial actions which impinge on autonomous state political and judicial functions. *See* Note, *Federalism and Federal Consent Decrees Against State Governmental Entities*, 88 Colum. L. Rev. 1796, n. 4 (1988); *see also, Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 107 (1984). In *Missouri v. Fiske*, 290 U.S. 18, 28 (1933), this Court held that Eleventh Amendment principles require federal courts to decline jurisdiction of cases brought by private parties if it

appears that the state is an indispensable party to enable the court to grant relief, and the state has not consented to be sued.

Federalism issues, by their nature, are so significant as to overcome technical barriers to review. Just as Eleventh Amendment issues not raised below may be considered for the first time on appeal, federalism issues not considered below may be considered when raised on appeal by a nonparty. The Court of Appeals is not free to disregard federalism concerns expressed by the state court through its appointed guardian *ad litem* but not considered by the district court.

In *Neuwirth v. Louisiana State Board of Dentistry*, 845 F.2d 553, 555 (5th Cir. 1988), the Court of Appeals pointed out that a federalism question not raised in the district court but raised for the first time in a letter sent to the circuit court a few days before oral argument was properly considered "because of the strong federalism concerns behind the [Eleventh] Amendment." Although a "party" raised the federalism question in *Neuwirth*, the court's explicit concern about the need for a full consideration of federalism whenever it is raised transcends party status.

The questions of federalism which permeate this case have never been discussed or ruled upon either by the district court or the United States Court of Appeals. The Court of Appeals refused to reach the federalism issue based on its strict and unwarranted adherence to the party-only appeal rule. The parties to the decree – the ACLU and DCFS – obviously could not be depended upon to raise the federalism implications in the decree

they have fashioned. If the state court's agent lacks standing to obtain review of the consent decree and related orders entered by the district court, no court will consider the very serious issues of federalism in this case. Hence the wisdom of a federal court intruding upon the *parens patriae* authority of the state court to protect the children of the state has gone unquestioned by any tribunal. This unbridled usurpation of state court authority cannot be permitted to stand.

The Seventh Circuit should have exercised jurisdiction to address the merits of the state court's federalism concerns regardless of the party-only appeal rule. The "better practice" set forth by this Court in *Marino* should not be relied upon to preclude review when federalism is at issue, particularly where the nonparty made two previous unsuccessful efforts to intervene to bring the federalism concerns to the attention of the district court.

This case presents an important vehicle to determine how many times the agent of the state court must seek leave to intervene in order to raise the state court's concern that a decree would abrogate the state court's *parens patriae* power. The Public Guardian was twice unsuccessful in his attempts to intervene in this case which was brought by the ACLU on behalf of the Public Guardian's clients and other children in Illinois. The Seventh Circuit dismissed as untimely the Public Guardian's appeal of the denial of his second motion to intervene. The Presiding Judge of the Juvenile Court in Cook County then ordered the Public Guardian to inform the federal court of his concerns regarding the decree. The state court expressly ordered the Public Guardian to ask the federal court to include certain provisions in the consent decree,

including a provision specifying that nothing in the decree is meant to preclude state court judges from exercising their inherent judicial responsibilities over wards of the court as a class or in any other way.

After the federal court refused to consider the state court's concerns and entered the consent decree without the requested protections, the Public Guardian appealed. The Seventh Circuit dismissed the appeal on jurisdictional grounds relying on the party-only appeal rule. As a result, the state court's concerns have gone unheeded. The consequences of this dismissal for federal/state relationships in the child welfare area – a federal decree without the requisite protections for the integrity of the state system – make it necessary that this Court grant certiorari to prevent the creation of a super federal Juvenile Court adjudicating day-to-day child welfare issues.

II.

THE EXTRAORDINARY NATURE OF THE USURPATION OF LEGITIMATE STATE COURT AUTHORITY BY THE FEDERAL CONSENT DECREE MAKES STRICT APPLICATION OF THE PARTY-ONLY APPEAL RULE UNACCEPTABLE IN THIS CASE.

This Court has consistently phrased the party-only appeal rule as a general rule. *See, e.g., Karcher v. May*, 484 U.S. 72, 75 (1987), and cases cited therein. Thus, this Court has recognized that the rule has longstanding exceptions which come into play mainly when the purpose of the rule is not served by denying appellate review. As one circuit judge succinctly explained:

> The rule embodies the generally valid assumption that non-parties, as to whom final decisions are not *res judicata*, do not have a sufficient interest in the controversy to lodge an appeal . . . But where the assumption that only parties are interested is not true and a non-party is aggrieved, [the Court is] free to exercise [its] constitutional and statutory jurisdiction.

Central South Carolina Chapter, Society of Professional Journalists v. United States District Court for the District of South Carolina, 551 F.2d 559, 566 (4th Cir. 1977) (Craven, J., concurring and dissenting); *cf. Deposit Guaranty National Bank v. Roper*, 445 U.S. 326 (1980) (despite general rule precluding appeals by party who receives all relief he has requested, in an appropriate case appeal may be permitted from adverse ruling collateral to merits by party who has prevailed). Thus, this Court has upheld the decision of the Court of Appeals where an enjoined nonparty appealed that portion of the lower court's decision concerning the nonparty. *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100 (1969). This Court has also unquestionably accepted the right of a nonparty to appeal an adjudication of contempt. *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 96 (1988).

The Courts of Appeal have frequently granted review pursuant to exceptions to the party-only appeal rule, and they continue to do so. In *Class Plaintiffs v. Seattle*, 955 F.2d 1268 (9th Cir.), *cert. denied sub nom. Hoffer v. Seattle*, 114 S. Ct. 408 (1992), the Ninth Circuit applied the exception that a nonparty who is enjoined or otherwise directly aggrieved by a judgment has standing to appeal. The Ninth Circuit permitted an appeal by a group of bond holders who were not class members but were enjoined

by the settlement from bringing parallel actions against the settling defendants based on the subject matter of the claims resolved by the settlement.

Courts have also found exceptions to the party-only appeal rule in extraordinary circumstances or where the appellant had participated in the district court even though not a party and the equities of the case weighed in favor of hearing the appeal. *See, e.g., Kenny v. Quigg*, 820 F.2d 665 (4th Cir. 1987) (nonintervening employee permitted to pursue appeal based on interest and participation in district court proceedings regarding employee stock ownership plan); *SEC v. Wencke*, 783 F.2d 829 (9th Cir.), *cert. denied sub nom. DeLusignan v. Gould*, 479 U.S. 818 (1986) (stockholder who participated but never moved to intervene has standing to challenge disgorgement proceedings in Court of Appeals); *Brown v. Board of Bar Examiners*, 623 F.2d 605, 608 (9th Cir. 1980) (state bar examiners and board of governors dismissed from action as improper parties have standing to appeal injunction by which they are bound).

A participating nonparty who is bound by a judgment rendered in a suit to which he was not a party of record has been described as a privy to the party on whose behalf he participates. 1B J. Moore, J. Lucas & T. Currier, *Moore's Federal Practice* ¶ 0.411[6] (2d ed. 1988); 9 J. Moore, B. Ward & J. Lucas, *Moore's Federal Practice*, ¶ 203.06 (2d ed. 1990). As a participating nonparty who is bound by the decree, the Public Guardian is entitled to appeal.

Moreover, the extraordinary circumstances surrounding this case are clear. The ACLU represents, on a class basis only, the 12,000 or so children represented by the Public Guardian individually and in some class actions as well, *see, e.g., Suter v. Artist M.*, ___ U.S. ___, 112 S. Ct. 1360 (1992), *rev'g* 917 F.2d 980 (7th Cir. 1990), both as attorney and guardian *ad litem*. The federal district court now acts in effect as *parens patriae* for the children for purposes of the consent judgment. The state court acts as *parens patriae* for the children for all purposes. Finally, the equities which weigh in favor of appellate jurisdiction in this case center on the Public Guardian's attempt to present, as ordered by the state court, serious federalism concerns about the decree.

In *United States v. Oakland*, 958 F.2d 300 (9th Cir. 1992), the court phrased the exceptions to the party-only appeal rule as follows: "It is occasionally possible for one who was not a party to the litigation in the trial court to appeal from the final judgment, but only after being granted leave to intervene for such purpose." This exceedingly narrow statement, which is the equivalent of the Seventh Circuit's ruling below, highlights the need for a writ of certiorari to clarify the continued viability of the long-standing exceptions to the party-only appeal rule.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner, Patrick T. Murphy, Public Guardian of Cook County, respectfully asks that this Court grant the writ of certiorari, vacate the opinion of the United States Court of Appeals for the Seventh Circuit and remand the case with directions to the United States Court of Appeals to resolve the serious issues of federalism raised in the appeal therein.

Respectfully submitted,

PATRICK T. MURPHY
Public Guardian of Cook County

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DATE: April 12, 1993

APPENDIX

APPENDIX

In the

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 92-1136

B.H., C.H., J.E., C.Z., E.G., O.G., S.G., C.G., P.G. and A.G., by their next friend, Susan Tone Pierce, individually and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

Patrick T. Murphy, Cook County Public Guardian,

Proposed Intervening Plaintiff-Appellant,

v.

Sterling M. Ryder, Acting Director of the Illinois Department of Children and Family Services,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 88 C 5599 – John F. Grady, *Judge.*

Argued September 14, 1992 – Decided January 14, 1993

Before Cudahy, Ripple, and Kanne, *Circuit Judges.*

Cudahy, *Circuit Judge.* Twice the Cook County Public Guardian, Patrick Murphy, sought to intervene in this action against the Director of the Illinois Department of Children and Family Services. Twice his motions were

denied. Now, after this court dismissed his appeal of the second denial of intervention and after the two original parties entered a consent decree that the district judge approved as fair, reasonable and adequate, Mr. Murphy appeals both district court orders denying his motions to intervene and also challenges the fairness and adequacy of the consent decree. We dismiss Mr. Murphy's appeal for lack of jurisdiction on grounds of untimeliness and because, with respect to the decree, he lacks standing to challenge the district court's rulings.

I.

The Department of Children and Family Services (DCFS) is the state agency responsible for providing protective and welfare services to abused and neglected children and their families. The plaintiffs here – a class of all children who have been or will be in the custody of the DCFS and placed by it somewhere other than with their biological parents – filed suit in June of 1988 seeking declaratory and injunctive relief against the Director of DCFS.[1] They asserted that various DCFS actions violated their right to adequate and safe placements and care under the Fourteenth Amendment, 42 U.S.C. § 1983 and the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 620-28, 670-79(a).

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[1] The Director at the time of the action, Sue Suter, was sued in her official capacity. She has since been replaced by Acting Director Sterling M. Ryder, who accordingly takes her place in this action.

On May 30, 1989, the district court granted in part and denied in part DCFS's motion to dismiss the action. *B.H. v. Johnson*, 715 F. Supp. 1387 (N.D. Ill. 1989). Specifically, the court held that the plaintiffs stated valid claims under the Fourteenth Amendment for violations of their constitutional right "to be free from arbitrary intrusions upon their physical and emotional well-being while directly or indirectly in state custody, and to be provided with adequate food, shelter, clothing, medical care, and minimally adequate training to secure these basic constitutional rights." *Id.* at 1405. The court also determined that the plaintiffs set forth a proper claim for violations of the Adoption Assistance and Child Welfare Act's case plan and case review requirements, but dismissed the plaintiffs' equal protection claims, their due process claims for violation of state statutory provisions and their remaining substantive due process claims. *Id.*

After extensive discovery over the course of two years, the parties agreed in August 1990 to the district judge's suggestion that they work toward settlement with the help of court-appointed experts who would assess DCFS's procedures and recommend improvements. The settlement process, conducted pursuant to Federal Rule of Evidence 706,[2] culminated in the consent decree, which the district court approved on December 20, 1991. This document imposes detailed requirements upon the DCFS

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[2] Rule 706 allows the court to appoint expert witnesses. On August 31, 1990, the court entered an agreed order appointing 13 experts to review ten substantive areas of the lawsuit and two people to manage the process.

in areas ranging from case management and case planning to assessments and accountability.

Mr. Murphy, meanwhile, was not satisfied with how the case was proceeding. He contended that his status as guardian *ad litem* for thousands of children in the juvenile court system gave him a substantial interest in the proceedings and justified his participation. Under the Juvenile Court Act of Illinois, a guardian *ad litem* must be appointed upon the filing in state court of a petition alleging child abuse or neglect, Juvenile Court Act § 2-17, Ill. Rev. Stat. ch. 37, § 802-17 (1990), and Mr. Murphy serves in that role in the Cook County juvenile court system. In September 1990 he filed a motion to intervene in this case, complaining that the counsel for the plaintiffs' class were inadequately representing them. The district court denied the motion, holding that Mr. Murphy failed to demonstrate a direct interest or to explain why his expertise was essential to resolution of the case. The court also based its denial on timeliness grounds, noting that intervention at that stage in the settlement process "would clearly be disruptive." Transcript of Proceedings of Nov. 7, 1990, at 9. Mr. Murphy did not appeal.[3]

Mr. Murphy again moved to intervene on April 24, 1991, on essentially the same grounds offered in his first motion. When the district of court denied that motion, he appealed to this court, which dismissed the appeal for

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[3] Instead, Mr. Murphy sought to amend his complaint in another case, *K.H. v. Suter*, No. 87 C 9833 (N.D. Ill. 1987), an individual damages action that the Public Guardian brought on behalf of a DCFS ward. The district judge in that case denied leave to amend.

lack of jurisdiction on July 8, 1991. Mr. Murphy now appeals both district court orders denying his motions to intervene; he also challenges the district judge's orders entering the consent decree and denying his motions to compel discovery, to expand distribution of notice and to request an evidentiary hearing and continuance of the fairness hearing.

II.

We turn first to the timeliness of Mr. Murphy's appeal of the denial of his motions to intervene. Appeals must be filed within thirty days after the date of entry of the judgment or order appealed from. Fed. R. App. P. 4(a)(1). Mr. Murphy filed this appeal on January 16, 1992. Thus, this appeal's challenge of the district judge's November 7, 1990, denial of intervention – an immediately appealable order – is untimely. Similarly, Mr. Murphy's appeal of the denial (on April 26, 1991) of his second motion to intervene (a virtual carbon copy of the first) also is untimely. Even if the present appeal of the April 26, 1991, order were filed within the thirty-day time period, this court has already considered and dismissed that appeal in July of 1991 and Mr. Murphy cannot attempt to revive it now.

Mr. Murphy argues that the present appeal is not untimely because this court's July 1991 dismissal of his earlier appeal instructed him to wait until the end of the case. That contention is unfounded. We based that dismissal on the untimeliness of the appeal – namely, Mr. Murphy's improper attempt, by filing a virtually identical intervention motion, to circumvent his failure to appeal

the first motion's denial within the required time. *See* Order of July 8, 1991, at 2. An order denying intervention is final and appealable. *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 513 (1950); *United States v. City of Oakland*, 958 F.2d 300, 302 (9th Cir. 1992); *see also* 7C Charles A. Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice and Procedure: Civil 2d* § 1923, at 508 (1986 & Supp. 1991). By necessity such an order is subject to immediate review, because denial of intervention precludes the proposed intervenor's ability to appeal the later judgment (and at that time to challenge the earlier denial of intervention). *See Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 378 (1987); *City of Oakland*, 958 F.2d at 302. Although we noted in the order dismissing the appeal of July 1991 that parties can wait until the case's conclusion and appeal from the final decision, *see* Order of July 8, 1991, at 2, this option is limited to parties or successful intervenors; neither of these terms describes the Public Guardian. By definition, an order *denying* intervention cannot be appealed by a party or by a successful intervenor. Such an order is "interlocutory" in the sense that it is entered during the course of the litigation and prior to final judgment in the entire case; in all other respects, however, it is final and must be appealed within 30 days or not at all. We therefore lack jurisdiction to consider Mr. Murphy's untimely appeal of the denials of intervention.

Turning to Mr. Murphy's other complaints about the district court's rulings – most notably the court's approval of the consent decree – we find it unnecessary to reach the merits because Mr. Murphy, a non-party, lacks standing to challenge those rulings. As the Supreme

Court stated in *Marino v. Ortiz*, 484 U.S. 301 (1988), "[t]he rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment, is well settled." *Id.* at 304; *see also Karcher v. May*, 484 U.S. 72, 77 (1987) ("[W]e have consistently applied the general rule that one who is not a party or has not been treated as a party to a judgment has no right to appeal therefrom.") (citations omitted). In the context of consent decrees, we have stated more specifically that parties whose motions to intervene were properly denied "have no right to attack the fairness of the consent decree because they are not *parties* to the agreement." *United States v. City of Chicago*, 908 F.2d 197, 200 (7th Cir. 1990), *cert. denied sub nom. Feldman v. United States*, 111 S. Ct. 783 (1991). Because Mr. Murphy is not a party in this case and has failed to intervene successfully, he has no standing to now challenge the district court's order entering the consent decree or its denial of motions to expand distribution of notice, to compel discovery or to request an evidentiary hearing and a continuance of the fairness hearing.

Mr. Murphy's untimely appeal of the denial of his motions to intervene makes it unnecessary to determine whether those motions were properly denied. Even if we had jurisdiction to consider Mr. Murphy's requests for intervention, however, we would not be persuaded that the district court erred in denying those motions. Mr. Murphy sought to intervene as of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure or, alternatively, to intervene permissively pursuant to Rule 24(b). Only abuse of discretion may upset the district court's denial of permissive intervention. In that respect, there are four relevant factors: timely application, an

interest relating to the subject matter of the action, potential impairment of that interest by disposition of the action and lack of adequate representation of the interest by the existing parties. *See Southmark Corp. v. Cagan*, 950 F.2d 416, 418 (7th Cir. 1991). Abuse of discretion is also the standard for evaluating the court's denial of intervention of right on grounds of untimeliness. *City of Chicago*, 908 F.2d at 199. Given the ample grounds for concluding that the case and the settlement negotiations had sufficiently progressed to warrant the district court's preclusion of interventions,[4] the district court did not abuse its discretion in denying intervention solely on grounds of timeliness. Thus, that conclusion justifies denial of Mr.

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[4] In the Transcript of Proceedings of Nov. 7, 1990, Judge Grady stated that

> [t]his is certainly not an ancient case, but I think timeliness has more to do with how much is over the dam by way of accomplishment in the case than it does the mere lapse of time. In this case, much has been accomplished, and at the suggestion of the Court, the parties have agreed upon a mechanism which could well result in the settlement of the case. . . .

He later continued:

> But, clearly, Mr. Murphy is not in sympathy with the plan of litigation which the Court and counsel have adopted in an effort to resolve the complex issues in this case in the most efficient manner possible. Intervention in that state of affairs would clearly be disruptive as far as that procedure is concerned. Therefore, the Court would be reluctant to permit intervention even if Mr. Murphy had a protectable interest and the representation of the class by existing counsel were inadequate.

See Transcript of Proceedings of Nov. 7, 1990, at 8-9.

Murphy's motions to intervene, whether permissive or as a matter of right.

An examination of the other three factors – which are reviewed *de novo* if the intervention is of right – might arguably be more favorable for Mr. Murphy than is timeliness. Success on any or all of these factors does not trump untimeliness, however. *See Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985), *cert. denied*, 474 U.S. 980 (1985) (stating that the failure to establish one of the four elements requires denial of the motion to intervene). As a result, even if the jurisdictional defect did not obviate this inquiry, Mr. Murphy has failed to demonstrate that the district court erroneously denied his motions to intervene.

III.

Because we lack appellate jurisdiction to consider Mr. Murphy's appeal of the denial of his motions to intervene, and because Mr. Murphy lacks standing to challenge the district court's other rulings, the appeal is DISMISSED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 12, 1991

July 8, 1991.

Before

Hon. JOEL M. FLAUM, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge
Hon. KENNETH F. RIPPLE, Circuit Judge

B. H., C. H., J. E., *et al.*,
Plaintiffs-Appellants,

and

PATRICK T. MURPHY,
Proposed Intervening Plaintiff-Appellant,

No. 91-2107 v.

SUSAN S. SUTER, DIRECTOR OF THE ILLINOIS DEPARTMENT OF CHILDREN & FAMILY SERVICES,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 88 C 5599
John F. Grady,
Judge.

Order

Susan Tone Pierce filed this class action seeking better care for children in the custody of Illinois' Department of Children and Family Services. More than two years after the commencement of the case, Patrick Murphy, the Public Guardian, filed a motion under Fed. R. Civ. P. 24 seeking leave to intervene. The district court denied this motion on November 7, 1990.

Murphy did not appeal, although entitled to do so to the extent he claimed intervention as of right under Rule 24(a). Instead he sought to amend his complaint in another case, *K.H. v. Suter*, No. 87 C 9833 (N.D. Ill.), to raise the contentions he sought to present by intervention in this case. The district court in *K.H.* declined to allow the amendment, and Murphy then filed a second motion to intervene in this case. This motion presented no facts, and made no arguments, that were unavailable last fall. When the second motion was called for argument, Mr. Murphy's sole statement to the court was: "We have nothing to say." The district judge denied this motion without comment, and Murphy has filed a notice of appeal.

This appeal comes too late. The time limits for filing notices of appeal apply to interlocutory as well as final decisions. A party may not file a belated motion for reconsideration – or, what comes to the same thing, a second identical motion – in order to obtain appellate review after the time to appeal the initial order has expired. Rather, the party must wait until the end of the case and appeal from the final decision. *Weir v. Propst*, 915 F.2d 283, 286 (7th Cir. 1990). See also *People Who Care v. Rockford Board of Education*, 921 F.2d 132, 134 (7th Cir. 1991); *Buckley v. Fitzsimmons*, 919 F.2d 1230, 1239 (7th Cir. 1990).

Murphy contends that changed circumstances justify his second motion and belated appeal. If there were such circumstances, he should have presented them to the district court, creating a record that could be the basis of an appeal. Murphy did not do so. Arguments presented for the first time in papers filed with this court are

insufficient, even if there is a "changed circumstances" exception to the rule of *Weir* – a subject we do not pursue.

This case is close to either settlement or trial. Appeal at this late date would derail the entire case. Murphy had an opportunity to obtain seasonable appellate review. Having bypassed that opportunity, he cannot insist that the entire litigation now conform to his schedule.

The appeal is dismissed for want of jurisdiction.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, JUVENILE DIVISION

IN THE INTEREST OF:	)	
Crystal G. and Saunya G.,	)	NO. 86 J 00324
	)	86 J 11198
Minors.	)	

ORDER

THIS MATTER COMING to be heard on the amended motion of the court-appointed attorney and guardian *ad litem*, the Cook County Public Guardian, Patrick T. Murphy, for instructions from the Court as *parens patriae*, the court having reviewed the pleadings of the Public Guardian and of the Department of Children and Family Services and the court having heard argument of counsel for DCFS, counsel for the ACLU and the Public Guardian,

IT IS HEREBY ORDERED that this court, pursuant to its *parens patriae* power, directs its appointed attorney and guardian *ad litem* for the wards of this court, the Cook County Public Guardian, to ask the Honorable John Grady, of the United States District Court, Northern District of Illinois, who is assigned to the case of *B.H. et al. v. Suter*, No. 88 C 5599, to:

A. Include a provision specifying that nothing in the decree is meant to preclude state court judges from exercising their inherent judicial responsibilities over wards of the court as a class or in any other way.

B. Specify that the consent decree is not meant to preclude the attorney and guardian *ad litem* appointed by the Juvenile Court of Cook County from taking any

action which he believes is necessary to protect the interests of his clients against DCFS on an individual, group or class basis, or in any other way.

C. Limit the broad language at pages two, nine and ten, which attempts to summarize the relief in the decree, to clarify that the decree resolves all issues pertaining solely to the internal bureaucracy of DCFS, which are within the executive authority of DCFS, but does not attempt to usurp the authority of the state court to supervise the actions of DCFS, as court-appointed guardian.

D. Clarify that the decree is not meant to limit plaintiffs from seeking systemic relief against DCFS in any state or federal court on issues which are not specifically resolved in the consent decree.

IT IS FURTHER ORDERED that this court's ruling on the Public Guardian's amended motion for instructions from the court as parens patriae is a final order, and this court finds that there is no just reason for delaying enforcement or appeal of this order.

PATRICK T. MURPHY
COOK COUNTY
PUBLIC GUARDIAN
1112 South Oakley Boulevard
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9/30, 1991

Enter:
A. N. Hamilton
Judge

Supreme Court, U.S.
FILED
APR 14 1993

No. 92-1660

In The

Supreme Court of the United States

October Term, 1992

PATRICK T. MURPHY,
Cook County Public Guardian,

Petitioner,

v.

B.H., *et al.*, by their next friend,
SUSAN TONE PIERCE, individually and on behalf
of all others similarly situated,

and

STERLING M. RYDER, Director of
the Illinois Department of
Children and Family Services,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

SUPPLEMENTAL APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

B.H., C.H., J.E., C.Z., E.G., O.G., S.G., C.G., P.G., and A.G., by their next friend SUSAN TONE PIERCE, individually and on behalf of all others similarly situated,	)	No. 88 C 5599
Plaintiffs,	)	Judge Grady
v.	)	
SUE SUTER, Director of the Illinois Department of Children and Family Services,	)	
Defendant.	)	

CONSENT DECREE

Plaintiffs filed this action on June 29, 1988, seeking declaratory and injunctive relief under 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 2201 *et seq.*, on their own behalf and on behalf of all others similarly situated because of alleged violations by defendant of the Fourteenth Amendment to the United States Constitution and the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 620-28, 670-79(a) (the "AAA").

PARTIES

At the time this lawsuit was filed, named plaintiffs B.H., C.H., J.E., C.Z., E.G., O.G., S.G., C.G., P.G. and A.G. were children who had been removed from their homes and placed in the custody of the Illinois Department of

Children and Family Services (the "Department" or "DCFS"). They ranged in age from 2 to 17 years old. On February 22, 1989, this Court issued an order certifying a plaintiff class, pursuant to Fed. R. Civ. P. 23(b)(2), consisting of all persons who, on or after the date of commencement of this action, are in the custody of DCFS and have been placed somewhere other than with their parents.

Defendant Sue Suter is the Director of DCFS and is sued in her official capacity.

PLAINTIFFS' COMPLAINT

Plaintiffs filed a Complaint, Amended Complaint and Second Amended Complaint. Plaintiffs alleged that they are placed in DCFS custody because of alleged abuse, neglect or dependency. While in DCFS custody, plaintiffs alleged that they are repeatedly subjected by DCFS to serious damage to their mental health, development and physical well-being because DCFS fails to provide them with safe and stable placements, shuffles many children among six or more temporary living arrangements, fails to provide appropriate services to prevent removal from their homes or reunify them with their families, warehouses them in violent and overcrowded shelters and psychiatric hospitals, and places them in foster homes where many of them are victims of the very kinds of abuse and neglect which prompted them to be removed from their homes. Plaintiffs also alleged that DCFS failed to provide them with adequate medical and mental health care, education, shelter, clothing and food. Plaintiffs asserted that these actions by defendant violated

their rights under the Fourteenth Amendment and the AAA.

Defendant moved to dismiss this action in its entirety, pursuant to Fed. R. Civ. P. 12(b)(6). In an order and memorandum opinion dated May 30, 1989, *B.H. v. Johnson*, 715 F. Supp. 1387 (N.D. Ill. 1989) (Grady, J.), this Court granted in part and denied in part defendant's motion with respect to plaintiffs' Amended Complaint. The Court held that plaintiffs' allegations set forth a claim under the Fourteenth Amendment for violations of plaintiffs' constitutional rights to be "free from unreasonable or unwarranted intrusions upon their physical and emotional well being while directly and indirectly in state custody, and to be provided by the state with adequate food, shelter, clothing and medical care, and minimally adequate training to secure these basic constitutional rights" as determined by the exercise of accepted professional judgment, practice or standards. *Id.* at 1396. The Court also held that plaintiffs had stated a claim for violations of the case plan and case review requirements under Title IV-E of the Adoption Assistance Act, 42 U.S.C. §§ 671(a)(16), 675(1), (5), but the Court rejected plaintiffs' procedural due process claims relating to alleged liberty interests arising under state law, plaintiffs' equal protection claims, and certain of plaintiffs' claims arising under the AAA, including plaintiffs' claims to "reasonable efforts" to prevent the need for placement and to reunify plaintiffs with their families under 42 U.S.C. § 671(a)(15). Following the issuance of the Court's Memorandum Opinion and Order, plaintiffs filed a Second Amended Complaint.

On November 16, 1990, plaintiffs filed a motion to reconsider dismissal of their claims to "reasonable efforts" to prevent placement and reunify them with their families in light of the decision in *Artist M. v. Johnson*, 917 F.2d 980 (7th Cir. 1990), *cert. granted*, No. 90-1488 (May 13, 1991). On December 12, 1991, the Court, without ruling specifically on the merits of plaintiffs' motion, granted plaintiffs leave to amend the Second Amended Complaint to add claims based on DCFS's alleged failure to make "reasonable efforts" under the AAA. As of the date of this Decree, the Supreme Court had not ruled on the pending appeal of the *Artist M.* decision. Notwithstanding this uncertainty as to the state of the law, the parties have entered into this Decree, and the parties acknowledge that final disposition of the issues raised by the *Artist M.* case will not be a basis for modification of this Decree.

Defendant has denied and continues to deny the allegations contained in plaintiffs' Complaint, Amended Complaint and Second Amended Complaint as amended, particularly all legal contentions that any alleged policies or practices have violated any law.

SETTLEMENT PROCESS

After extensive discovery, and on the suggestion of this Court, the parties agreed to stay further discovery and try to settle the case. On August 31, 1990 this Court, pursuant to Federal Rule of Evidence 706, entered an agreed order appointing 13 experts to review ten substantive areas of the lawsuit, as set forth in the terms of the order. The Court also appointed two individuals, Joseph

T. Monahan and Donald M. Hallberg, to serve as managers of the process.

On October 31, 1990, the parties received reports containing the findings and recommendations of the experts, as well as the report of the managers. On the basis of these reports and the extensive discovery in this matter, the parties engaged in extensive settlement negotiations in an effort to avoid the burden, costs and inherent risks of further litigation. Based on these considerations, and following the review of the terms of this Decree and consultation with various persons involved in the child welfare system, plaintiffs and defendant have determined that it is in the interests of the certified class and the public interest to settle this action with the entry of this Decree.

This Decree is the result of a compromise and settlement and is not a determination of liability. Nothing herein shall be considered an admission of fault of any kind by defendant, nor shall anything herein be considered a reflection of any weakness of proof by plaintiffs.

Having carefully reviewed this Decree, the parties being in agreement hereto, and the Court being fully advised of the premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

DEFINITIONS

1. As used herein, the following terms have the following meanings:

a. "ACR" or "administrative case review" refers to a professionally appropriate case review. Examples of

such reviews are currently specified at 42 U.S.C. § 675(5) and Ill. Rev. Stat. ch. 23, ¶ 5006a.

b. "Caretaker" means persons or entities other than foster parents providing substitute care for children in the custody or guardianship of DCFS, including private agencies, group homes and institutions.

c. "Caseworker" unless the context clearly requires otherwise, means any worker responsible for providing direct services to children and families, including child protection investigators and follow-up workers. The term "caseworker" does not include supervisors.

d. "Case plan" or "service plan" means a plan for the care of a child formulated in conformity with good social work practice. Examples of such plans are currently specified at 42 U.S.C. § 675(1) and Ill. Rev. Stat. ch. 23, ¶ 2058.2.

e. "Child," "children," "class members" or "plaintiffs" all mean solely members of the class certified by this Court's order dated February 22, 1989, and defined as all persons who, on or after the date of commencement of this action, are in the custody of the Illinois Department of Children and Family Services and who have been placed somewhere other than with their parents.

f. "Department of Children and Family Services" or "DCFS" or the "Department" or "defendant" means the defendant Director of DCFS in her official capacity and her agents, and includes all successor Directors of DCFS and their agents, as well as the Directors of

any successor state agencies with the responsibility of taking custody or guardianship of the plaintiff class.

g. "DCFS protective custody" commences at the point at which DCFS takes protective custody of a child within the meaning of Ill. Rev. Stat. ch. 23, ¶ 2055 (or any successor statute), or continues the protective custody taken by anyone else authorized under state law to take protective custody of a child.

h. "Foster parent" means persons providing foster care services in their homes, and includes, unless specifically stated otherwise in the body of this Decree, DCFS foster parents, private agency foster parents and all relative foster parents.

i. "Guardianship" includes all children who have been committed by order of a juvenile court to DCFS pursuant to Ill. Rev. Stat. ch. 37, ¶¶ 802-27.

j. "Parent" means the biological or adoptive parent of a child or, unless otherwise specified, the legal guardian of a child other than DCFS. "Parent" does not include foster parents or persons whose parental rights have been terminated.

k. "Reform panel" means a group of individuals selected by DCFS, after consultation with class counsel for plaintiffs and the monitor, to review existing DCFS policies and/or practices with regard to an issue as specified by this decree. All reform panels shall include class counsel for plaintiffs (or their representatives), the monitor (or his or her representatives), a cross-section of persons with expertise regarding the issue, and a cross-

section of persons whose interests are affected by the issue.

l. "Residential placements" means group homes and institutions.

m. "Temporary custody" includes all children who have been placed in the temporary custody of DCFS by order of a juvenile court pursuant to Ill. Rev. Stat. ch. 37, ¶ 802-10. "Custody" means temporary custody or protective custody.

DISCLAIMER

2. The provisions set forth in this Decree are solely for the purpose of settlement of this action and by agreeing to this Decree neither party makes any express or implied admission of fact or law.

3. This Decree shall apply only to those persons who are members of the plaintiff class. This Decree creates no rights in favor of any other person and creates no obligations or duties on the part of defendant beyond the terms of this Decree. Nor shall this Decree create any right enforceable in any proceeding other than this case. Nothing set forth in this paragraph shall bar or limit this Court's power to enforce the terms of this Decree.

PURPOSE OF DECREE AND STANDARD OF CARE FOR CLASS MEMBERS

4. It is the purpose of this Decree to assure that DCFS provides children with at least minimally adequate care. Defendant agrees that, for the purposes of this Decree, DCFS's responsibility to provide such care for

plaintiffs includes an obligation to create and maintain a system which assures children are treated in conformity with the following standards of care:

a. Children shall be free from foreseeable and preventable physical harm.

b. Children shall receive at least minimally adequate food, shelter and clothing.

c. Children shall receive at least minimally adequate health care.

d. Children shall receive mental health care adequate to address their serious mental health needs.

e. Children shall be free from unreasonable and unnecessary intrusions by DCFS upon their emotional and psychological well being.

f. Children shall receive at least minimally adequate training, education and services to enable them to secure their physical safety, freedom from emotional harm, and minimally adequate food, clothing, shelter, health and mental health care.

5. In order to meet this standard of care, it shall be necessary for DCFS to create and maintain a system which:

a. provides that children will be timely and stably placed in safe and appropriate living arrangements;

b. provides that reasonable efforts, as determined based on individual circumstances (including consideration of whether no efforts would be reasonable) shall be made to prevent removal of children from their

homes and stably to reunite children with their parents, where appropriate and consistent with the best interests of the child;

c. provides that if children are not to be reunited with their parents, DCFS shall promptly identify and take the steps within its power to achieve permanency for the child in the least restrictive setting possible;

d. provides for the prompt identification of the medical, mental health and developmental needs of children;

e. provides timely access to adequate medical, mental health and developmental services;

f. provides that while in DCFS custody children receive a public education of a kind and quality comparable to other children not in DCFS custody;

g. provides that while in DCFS custody children receive such services and training as necessary to permit them to function in the least restrictive and most homelike setting possible; and

h. provides that children receive adequate services to assist in the transition to adulthood.

6. Plaintiffs' cause of action alleged deficiencies in DCFS policies and practices generally. This Decree is intended to address only claims arising from said cause of action. Plaintiffs did not complain of isolated deprivations of adequate care and services. No class member is permitted to enforce this Decree based solely on isolated instances of non-compliance with the standards described in paragraphs 4-5 above or with any other provisions in this Decree.

PROTECTIVE SERVICES AND INITIAL ASSESSMENT

7. Initial Assessment. By July 1, 1993, DCFS shall perform initial social assessments under the circumstances described below as well as risk assessments and investigations of families that are the subject of pending abuse or neglect reports. Such social assessments shall be performed as soon as practical once a caseworker begins to consider removal of the child from the home and, in all cases, in time for any shelter care hearing in the case. Nothing in this paragraph will require DCFS to refrain from taking protective custody where there is reason to believe that the child is in imminent danger to his or her life or health. Such initial social assessments shall include a preliminary assessment of the child and family sufficient to (i) permit DCFS to identify reasonable efforts, if any, that can be made to address allegations of abuse and neglect and keep a family intact; (ii) identify any needs of an emergency nature (including food and clothing); (iii) commence to identify and preliminarily select appropriate family and relative resources to keep a family intact or, if the family cannot be kept intact, preliminarily select appropriate placement resources.

8. Reasonable Efforts to Prevent Placement. As of the date of the entry of this Order, DCFS shall not remove a child from a parent or continue the removal by another person authorized to take protective custody under state law unless the standard set forth in Ill. Rev. Stat. ch. 23, ¶ 2055 is met, and unless DCFS has made reasonable efforts to prevent or eliminate the need for removal of the child. "Reasonable efforts" as used in this paragraph and paragraph 7 means such efforts to preserve the family as

are consistent with good social work practice based on the individual circumstances of the case and the best interest of the child, and may include but are not limited to the offer and provision of appropriate family preservation services from among those listed at Ill. Rev. Stat. ch. 23, ¶ 2058.2. In certain instances, it may be that, due to the individual circumstances of the case and the best interests of the child, no efforts reasonably can be made to preserve the family, Nothing in this paragraph will require DCFS to refrain from taking protective custody if there is reason to believe the child is in imminent danger to his or her life or health.

9. Documentation of Reasons for Protective Custody and Reasonable Efforts. By January 1, 1993, when DCFS receives temporary custody of a child, DCFS shall document the reasons why custody was taken and the efforts that were made, if any, to prevent the need for removal. The form of this documentation shall be determined in accordance with the procedure set forth in paragraph 41 below.

10. Elimination of Interim Service Teams. By July 1, 1993, DCFS will eliminate and not reinstate the Interim Service Team approach to initial case staffing.

11. Pre-Placement Resource Referral Information. By July 1, 1992, DCFS will develop resource referral information accessible to all direct service staff identifying the services available to serve children and families in each region. This information shall be reviewed continually and updated at least annually.

12. Abuse and Neglect Reports on Children Already in DCFS Custody. By July 1, 1992, when a child is

reported to DCFS as having been abused or neglected while in placement – whether by the foster parent, caretaker, or any other person in the placement – DCFS shall ensure that the parent of the alleged abuse or neglect victim and all DCFS caseworkers or case managers responsible for the alleged victim and for any other children in the placement are promptly notified when the report has been made, when an investigation is pending and when such report is "indicated" or "unfounded," within the meaning of Ill. Rev. Stat. ch. 23, ¶ 2053. If such a report has been indicated, DCFS shall promptly notify licensing staff to initiate a review of the licensing status of the placement and shall ensure that all appropriate personnel, when making placement decisions, are informed that a report has been indicated involving the placement. The quality assurance unit shall evaluate the investigation and disposition of such reports and shall submit a report on such abuse or neglect reports as provided in paragraph 62 below of this Decree. The Administrative Case reviewer responsible for reviewing the case plans of the children involved shall be notified of all such reports and findings and, where appropriate, shall initiate an Administrative Case Review as provided in paragraph 24 below of this Order to assure that appropriate adjustments to the case plan are made.

SCREENINGS AND ASSESSMENTS FOR CHILDREN

13. Initial Health Screening.

a. By July 1, 1993, DCFS shall ensure that within 24 hours of entering DCFS protective custody, all

children will receive an initial health screening by a physician or other provider qualified under Illinois law to furnish primary medical and health services. The initial health screening shall be of sufficient scope to permit DCFS to ascertain enough about the current health of the child to identify (i) any health needs requiring immediate attention, and (ii) any health information needed to make an informed placement decision.

b. Whenever possible this initial health screening should include an effective professionally acceptable screening such as the program described under Sections 5122 and 5123.2 of the HCFA Program Manual Governing Early and Periodic Screening, Diagnostic and Treatment Services ("EPSDT"), dated April 1990 (hereinafter referred to as "ESPSDT Standards"). If it is not possible to provide a complete screening as described in this subparagraph within 24 hours of DCFS protective custody or if the circumstances under which protective custody is taken do not warrant such a screening, this more complete screening shall in all cases be performed no later than 48 hours after the temporary custody hearing is held under Ill. Rev. Stat. ch. 37, ¶¶ 802-9, 802-10.

14. Comprehensive Assessment.

a. By July 1, 1994, DCFS will ensure that all children receive a comprehensive assessment sufficient to permit the child's follow-up caseworker to develop an appropriate case plan as described below at paragraphs 15-17. The assessment shall be completed sufficiently in advance of the case plan to incorporate the contents of the assessment into the case plan. The components of this comprehensive assessment shall all be performed by

qualified personnel. This comprehensive assessment shall consist of at least the following:

(1) all appropriate diagnostic studies to evaluate the child's health, including physical, dental or mental illnesses or conditions discovered or indicated by the initial screening examination described in paragraph 13 above;

(2) a completion of the medical and immunization history of the child and, where available, relevant medical history of the child's parents;

(3) a social assessment of the child's family, including family history, location of absent or non-custodial parents and other relatives and their relationship to the family, and an assessment of the appropriateness of family reunification as a permanency goal and the steps necessary to achieve reunification;

(4) if indicated by any other component of the assessment, a preliminary, age-appropriate substance abuse screening of the child;

(5) a basic educational assessment including identification of the child's current school and grade level; the child's educational history; and identification of any educational goals and needs including the need for any further educational testing or assessments;

(6) a developmental screen on all children not yet of school age; and

(7) a basic mental health screening and, if indicated or recommended in the exercise of professional judgment, more intensive evaluations.

Any of the above may be omitted if a person administering an assessment provides documentation that he or she is informed of the results of a recent equivalent evaluation. The written results of the comprehensive assessment may be received after preparation of the case plan, but, absent clinical necessity, all such results shall be received within 60 days after DCFS protective custody. Results can be received after the preparation of the case plan only if and only to the extent that such delay is the result of clinical necessity or earlier receipt is not necessary for the case plan.

b. By July 1, 1993, DCFS will ensure that all children receive an assessment sufficiently in advance of the case plan to incorporate the contents of the assessment into the case plan which assessment shall consist of at least the following:

(1) compilation of the medical and immunization history of the child and, where available, relevant medical history of the child's parents;

(2) a social assessment of the child's family, including family history, location of absent or non-custodial parents and other relatives and their relationship to the family, and an assessment of the appropriateness of family reunification as a permanency goal and the steps necessary to achieve reunification; and

(3) a basic educational assessment including identification of the child's current school and grade level; the child's educational history; and identification of any educational goals and needs including the need for any further educational testing or assessments.

Any of the above may be omitted if a person administering an assessment provides documentation that he or she is informed of the results of a recent equivalent evaluation. The written results of this assessment may be received after preparation of the case plan, but in no event more than 60 days after DCFS protective custody. Results can be received after the preparation of the case plan only if and only to the extent that such delay is not the result of clinical necessity or earlier receipt is not necessary for the case plan.

c. Nothing in this section will be construed to abridge DCFS's obligation to obtain the consent of the child, his or her parents or a court order to conduct such assessments where such consent would otherwise be necessary.

d. By January 1, 1994, for children already in DCFS custody or guardianship prior to the time the comprehensive assessment system described in paragraph (a) is implemented, DCFS will complete a review of all such children to determine whether DCFS lacks any of the information that would be provided by any of the assessments described in paragraph (a) and, where such information is lacking, DCFS shall provide such assessments.

CASE PLANS AND PERMANENCY GOALS

15. Case Plan.

a. By January 1, 1992, DCFS shall ensure that a written case plan is developed for all children within 30 days after entering DCFS temporary custody, and, in all cases, within 35 days after protective custody.

b. After the effective dates in paragraphs 13 and 14 above, the case plan shall be based on the results of the health screening and comprehensive assessment described therein, and, if appropriate, shall be revised to reflect the results of any follow-up assessments or other subsequent assessments of the child. The case plan shall be developed by the follow-up caseworker following discussions or consultation with the child (if old enough), parents (including discussion and consideration of the parents' concerns with the parents' portion of the plan), foster parents or other placement provider, the child's teacher, and any professionals who conducted the medical screening or comprehensive assessment. The purpose of such consultations shall be to both solicit the information and views of the persons contacted and to attempt to build support among them for the evolving case plan. In the event that a parent has stated concerns about the case plan, those concerns shall be documented. In every case, the case plan will be the product of the professional judgment of the Department staff. All case plans shall be developed by the follow-up caseworker and individually reviewed and approved by supervisory staff. Nothing in this paragraph shall be construed to relieve DCFS from its obligation to comply with the provisions of paragraph 15a.

c. The case plan shall include the information required by good social work practice, including the information identified by Section 675(1) of the AAA, 42 U.S.C. § 675(1), and shall include the contents set forth in paragraph 16.

d. By July 1, 1993, copies of the case plan shall be provided to the parents, the child (if it would be in the

child's best interest), and the child's lawyer at least two business days in advance of the Administrative Case Review described in paragraphs 20-25.

16. Contents of Case Plans. The format of the case plan shall be determined as set forth in paragraph 41 below. By July 1, 1993, DCFS will ensure that all case plans for children will include at least the following:

a. the permanency goal for the child and the reason for selection of the goal, the target date for achievement of the permanency goal and the reason for selection of the target date. Where reunification is the goal, the permanency plan shall require DCFS to make reasonable efforts to reunify the family by helping the child and family address the risks to the child which prevent reunification. Reasonable efforts as used in this paragraph means such efforts to preserve the family as are consistent with good social work practice based on the individual circumstances of the case and the best interest of the child, and may include but are not limited to the offer and provision of appropriate family preservation services from among those listed at Ill. Rev. Stat. ch. 23, ¶ 2058.2. In certain instances, it may be that, due to the individual circumstances of the case and the best interests of the child, no efforts reasonably can be made to preserve the family.

b. the reason why the child has been put in his or her current placement, the resources or other support that will be necessary to maintain the placement, and, where a residential placement has been deemed necessary in the exercise of reasonable professional judgment, a description of how and when a plan for moving the

child to the least restrictive most homelike placement consistent with the child's best interest can be developed and implemented;

c. the health care to be provided the child consistent with paragraph 44 and the mental health care to be provided to address the child's serious mental health needs;

d. an education plan consistent with the provisions of paragraph 47;

e. if not otherwise identified under any other provisions of this paragraph, the identification and provision for any special needs of the child resulting from conditions which cause the child to suffer serious functional impairment. Such causes may include serious emotional disturbance, developmental disability, medically complex conditions, sexual abuse, or substance abuse.

The case plan, in addressing the foregoing, will indicate the actions that will be required, who will be responsible for taking those actions, and the services or other support that will be necessary to carry out the plan.

17. Services Identified in the Case Plan. By July 1, 1994, DCFS shall ensure that all services specified in the case plan pursuant to paragraph 16 are provided within the time necessary to accomplish their purpose.

18. Permanency Goals and Goal Achievement Dates. By January 1, 1993, DCFS shall develop and implement policies defining appropriate permanency goals, the circumstances under which each goal is to be used, and reasonable time guidelines within which each permanency goal ordinarily should be achieved. In order to

develop these policies, DCFS will convene a reform panel. These policies shall be consistent with all federal and state statutes and shall have as their purpose the timely achievement of permanency consistent with the best interest of the child. These policies shall give priority to the promotion of family reunification where it is consistent with the safety and best interests of the child and can be achieved through the exercise of reasonable efforts. In the event that reunification is not appropriate for a child and his or her family, these policies shall give priority to the permanency goal which offers the child the most family like permanent placement possible consistent with the best interests of the child.

19. Parental Notice and Parent/Child Handbooks.

a. By July 1, 1992, parents shall be provided a general notice summarizing the current procedures under state law regarding temporary custody, guardianship and termination of parental rights as well as notice of how to obtain information from DCFS regarding their child at the following times: (i) when their child is removed from their custody by DCFS or at the time of the parents' first contact with a DCFS caseworker after such removal; (ii) at the initial 45-day administrative case review if the parent is present; and (iii) with the mailed notice of each subsequent ACR unless their address is unknown. This notice may be combined with other notices required to be distributed by DCFS and shall include notification that the administrative case review is an opportunity to raise any concerns regarding the contents of the case plan. This notice shall be in a language and a form understandable to the parent.

b. By July 1, 1993, parents shall receive from DCFS a handbook explaining the rights and duties of parents to their children and their relationship with DCFS. The handbook shall be distributed at the earliest appropriate time, but no later than at the initial administrative case review. If the parents are not present at the initial administrative case review, a copy of the handbook will be mailed to them unless their address is unknown.

c. By July 1, 1993, children over 10 years old shall receive a handbook from DCFS explaining proceedings concerning their custody and guardianship under state law and their relationship with DCFS. This handbook shall be given to children at the earliest appropriate time following an order placing a child in the temporary custody of DCFS, but no later than at the initial administrative case review.

d. Each of the handbooks and the notices required by this paragraph shall be reviewed for revision annually, and, when such revisions result in material changes to the handbooks and notices, current versions of those materials shall be provided to parents and children.

ADMINISTRATIVE CASE REVIEWS

20. Purposes of Administrative Case Reviews.

Administrative case reviews shall assure that each case is managed in conformity with DCFS' policies and procedures, the relevant provisions of state and federal law, and the provisions of this Consent Decree. Administrative case reviews shall also assure that the Department is

regularly advised on a systemic basis of the performance of its workers and their delivery of services.

21. Initial Administrative Case Review. By July 1, 1992, DCFS shall ensure that an initial administrative case review is conducted for all children within 45 days after temporary custody is awarded to DCFS. The administrative case review staff shall be responsible for ensuring that this initial administrative case review includes at least the following:

a. a determination that the initial health screening and comprehensive assessment, pursuant to paragraphs 13 and 14 above, have been performed;

b. a review of the initial case plan to ensure that the plan complies with all DCFS policies and procedures and any applicable terms of this Decree;

c. a review of the case record to ensure that the record contains documentation as to the reasons why the child was taken into DCFS custody and the reasonable efforts that were made to keep the family intact; and

d. a review of the reasons for selecting the permanency coal, the appropriateness of the plan to the goal, and goal achievement date to ensure that these decisions are consistent with DCFS policies and procedures.

22. Persons Invited to ACR. By July 1, 1992, DCFS shall establish policies and procedures providing that the child (if old enough and in the child's best interest) and follow-up caseworker shall attend all administrative case reviews. In addition, DCFS shall notify the child's parents and foster parents or caretaker in advance of the date, time and location of the ACR and make reasonable efforts

to accommodate the parents' schedules. DCFS may invite other professionals involved in assessing or treating the child. Any legal representative appointed by a court or retained to represent any parent or child may attend an ACR without prior notice. Where DCFS has been notified in advance of the identity of such legal representative, DCFS will provide the legal representative the date, time and location of the ACR.

23. Six-month Administrative Case Reviews. By July 1, 1992, DCFS shall ensure that administrative case reviews are conducted every six months after temporary custody is awarded to DCFS. At each administrative case review, the ACR staff shall review whether the case plan is being implemented and whether the goals, needs, and services as stated in the case plan continue to be appropriate. If necessary, based on this review, the reviewer shall consider whether the permanency goal or target date should be changed and whether the case plan should otherwise be modified. The reasons for changing the case plan shall be recorded in the case record.

24. Administrative Case Review Staff. By July 1, 1992, DCFS will develop and implement policies and procedures providing that the Administrative Case Review staff are administratively independent of the caseworker and supervisor assigned to any child's case. Administrative case reviewers will be appointed in sufficient numbers to permit them to perform their duties competently. Administrative case reviewers will be selected on the basis of their demonstrated knowledge and experience in child welfare. Administrative case review staff shall have, among other things, the authority and responsibility to order changes in the case plan if

necessary to assure that each case is managed in conformity with Department policies and procedures and with this Decree. Administrative case review staff shall have the authority to order that an administrative case review occur at some period sooner than provided in this Decree if the facts of the case so merit. By July 1, 1993, DCFS shall develop a regular reporting mechanism to promptly inform direct service administrators and supervisors of relevant information generated during the ACR process.

25. Written Reports on Administrative Case Reviews. By July 1, 1992, DCFS shall provide written reports on the results of the ACR. A copy of the current service plan and the written report shall be sent to the child (if old enough and in the child's best interests), counsel for the child, the parents, and, upon request, any other person attending the administrative case review within 7 days of completion of the ACR, provided, however, that, if requested by the parents, the portion of the plan and ACR report regarding the parents shall not be sent to parties other than the parents, the child (if old enough and if in the child's best interests), and counsel for the child.

CASE STAFFING AND MANAGEMENT

26. Overall Case Management System. By July 1, 1994, DCFS will establish and maintain a case management system which does the following for each case:

a. clearly designates the roles of caseworkers and supervisory staff;

b. clearly designates the respective responsibilities of private agencies and DCFS; and

c. identifies a caseworker or case manager with the training, competence and authority to carry out Department policies and procedures and the terms of this Decree.

27. Child Protective Services Staffing.

a. By July 1, 1993, each DCFS child protective services investigator will be assigned no more than 12 new abuse or neglect investigations per month during nine months of a calendar year. During the other three months of the calendar year, the investigator will be assigned no more than 15 new abuse or neglect investigations per month. Neither the nine months nor the three months need occur consecutively.

b. By January 1, 1993, DCFS child protective services supervisors will be responsible for supervising no more than 8 investigators per supervisor. By July 1, 1994, DCFS child protective services supervisors will be responsible for supervising no more than 7 investigators per supervisor.

28. Follow-up Casework Staffing.

a. By July 1, 1993, DCFS follow-up caseworkers responsible for services to intact families will be assigned a caseload not to exceed 25 families will be assigned a caseload not to exceed 25 families per caseworker. By July 1, 1994, DCFS follow-up caseworkers responsible for services to intact families will be assigned a caseload not to exceed 20 families per caseworker.

b. By July 1, 1993, DCFS follow-up caseworkers responsible for services to children in DCFS foster care will be assigned a caseload not to exceed 30 child cases per caseworker. By July 1, 1994, DCFS follow-up caseworkers responsible for services to children in DCFS foster care will be assigned a caseload not to exceed 25 child cases per caseworker.

c. By July 1, 1993, cases of children in private agency foster care with private agency follow-up caseworkers will be assigned to DCFS follow-up caseworkers for monitoring purposes at a caseload not to exceed an average of 100 child cases per DCFS caseworker.

d. By July 1, 1994, DCFS follow-up caseworker supervisors will be responsible for supervising no more than 7 follow-up caseworkers (either foster care, intact family or monitoring) per supervisor. Excluding absences caused by caseworkers' planned vacations, supervisors will not be assigned direct responsibility for any cases unless necessary due to the short-term absence or vacancy of a caseworker position. In no event shall a supervisor spend more than 10% of his or her time substituting this fashion for absent caseworkers.

e. Follow-up caseworkers may be assigned both intact family and foster care cases. Such mixed caseload assignments shall be weighted appropriately to be consistent with the standards set forth above.

f. The Department shall assure that all relevant standards set forth in this paragraph shall apply to any private agency contracting with DCFS to provide foster care, investigative services or casework for intact families.

29. Case Management for Children with Special Needs. By July 1, 1993, DCFS will provide for the assignment of cases of children with special needs, including, for example, seriously emotionally disturbed, developmentally disabled and medically complex children, to specially trained and qualified case managers who will be responsible for developing and monitoring the case plan for such children; determining the appropriate placement and services for such children; and ensuring that all services and assessments are provided. Case managers will be assigned no more than 50 child cases per manager. These case managers may be contracted as well as employed by DCFS. In each instance children assigned to a case manager shall receive appropriate primary casework services from another caseworker or other appropriate professional. Commencing July 1, 1994 and concluding September 1, 1994, a reform panel shall be convened to review the operation of this case management system and to make appropriate recommendations regarding casework and case management for special needs children.

30. Access to Specialists. By July 1, 1993, DCFS will ensure that all DCFS caseworkers and their supervisors have access to qualified Department-based or independent specialists in health care, mental health, developmental disabilities, substance abuse, education, sexual abuse and child development as needed.

31. Ability to Access Resources. By July 1, 1994, all DCFS caseworkers and their supervisors shall be familiar with or have access to persons who are familiar with the existence of such resources as are necessary to implement

case plans and with the procedures necessary for accessing such resources for the benefit of the children and families for whom they are responsible.

32. Clerical and Office Support. By July 1, 1993, DCFS shall assure that all caseworkers are provided with adequate official and clerical support and a suitable office environment.

33. Staff Expectations and Performance.

a. By January 1, 1992, DCFS will develop and disseminate to all DCFS staff a statement of the Department's mission and values.

b. By July 1, 1993, DCFS will develop and implement a set of performance standards governing the responsibilities of all DCFS caseworkers. These standards shall be subject to review and comment by counsel for plaintiffs and the monitor.

c. By July 1, 1994, all evaluations of DCFS caseworkers will be required to measure staff performance based on these mission, values and performance standards. These performance standards will be continually reviewed by DCFS, and may be modified by DCFS as appropriate.

34. Caseworker Supervision. By July 1, 1993, DCFS shall assure that all of its caseworkers are adequately supervised. In order to meet this obligation the Department will convene a reform panel to review and make recommendations concerning the protocols, duties and job description applicable to caseworker supervisors. DCFS shall monitor the conformity of its practices to

these protocols and job requirements, including through the use of the administrative case review system.

PLACEMENT AND OTHER SERVICES

35. Initial Placement Protocol. By July 1, 1993, DCFS shall develop and implement a professionally acceptable protocol governing the responsibilities of the caseworker to minimize the separation anxiety experienced by a child when the child is removed from his or her home.

36. Placement Decisions.

a. By July 1, 1993, all placement decisions will be made consistent with the best interests and special needs of the child, including consideration of the following:

(1) the least restrictive setting appropriate for the child;

(2) where the goal is family reunification, reasonable proximity to the child's family;

(3) maintaining continuity of the child's education and social relationships; and

(4) consistent with the requirements of state or federal law, due consideration to the desirability of placement of children with relatives, siblings, and foster parents or caretakers who are sensitive to the child's cultural, religious, ethnic and racial heritage.

b. As of July 1, 1992, in any case where a child has been placed 3 times within six months, a special review of the case will be performed by the DCFS quality

assurance unit immediately following the third placement. In conducting this review, the quality assurance unit will have the authority to obtain any information necessary for the review, including further clinical assessments or evaluations. A copy of the review will be placed in the case file. The quality assurance unit will prepare a quarterly report of these reviews for the Director and the Monitor. After July 1, 1994, the issue of multiple placements will be specifically reviewed at any ACR conducted for a child after the third unplanned placement irrespective of the time in between replacements.

c. No child will be placed by DCFS in a psychiatric hospital unless psychiatric hospitalization is necessary. By January 1, 1993, all such children will be screened by a qualified independent mental health professional prior to such hospitalization in order to determine the appropriateness of the recommended hospitalization, unless the hospitalization is of an emergency nature, in which case the screening will be conducted within 48 hours of the hospitalization. The length of time such children are hospitalized will also be monitored by a qualified independent mental health professional and such professional will be responsible for conducting a special review of any child who remains hospitalized in excess of 30 days. No child will be psychiatrically hospitalized longer than is clinically necessary. Absence of an appropriate placement shall not be deemed a basis for continuing a child's hospitalization.

37. Emergency Placements, Diagnostic Shelters, and Out of State Placements.

a. No child will stay overnight in an office or hotel in lieu of an appropriate placement. By January 1, 1993, DCFS will discontinue the operation of all shelters directly operated by the Department. This provision does not preclude DCFS from contracting with private agencies for the provision of short-term emergency shelter or foster care services.

b. By July 1, 1994, short-term diagnostic placements shall be limited to 30 days after the time period deemed clinically necessary to complete the appropriate diagnostic evaluation or treatment, and in no event shall last more than 90 days. Other short-term placements including emergency shelter or emergency foster care placements, shall be limited to 30 days. The placements described in this subparagraph may continue in excess of these time periods only in the following circumstances:

(1) the child has been accepted at an appropriate long-term placement which is not currently but will soon become available and it would be more disruptive for the child to be moved from the short-term placement prior to the identified placement becoming available; or

(2) in the rare case where a child is difficult to place because of particular special needs or problems and it would be more disruptive for the child to be moved from the short-term placement. Age, race, gender and normal adolescent behavioral problems shall not be considered special needs or problems within the meaning of this paragraph. In each such case, a special review of the child's comprehensive assessment

and efforts made to place the child shall be conducted by the caseworker, supervisor and administrative case review unit and completed prior to 90th day for children in diagnostic placements or the 45th day for children in other short term placements. Upon the completion of such a review, the child shall be provided with a suitable placement consistent with the child's case plan and with the principles set forth in paragraph 36.

c. By July 1, 1994, DCFS shall cease to use out of state residential placements located more than 150 miles from a child's home unless:

(1) the child has unusual and special needs requiring a placement which provides specialized services; and

(2) no placement providing comparable specialized services exists within Illinois.

38. Information Relevant to Caring for Children in Placements.

a. By July 1, 1993, DCFS will ensure that any information that is known to DCFS and relevant to caring for a child shall be communicated promptly to that child's foster parent or caretaker. Specifically, with respect to initial or emergency placements, DCFS shall ensure that such information is communicated at the time of placement or in no event later than 2 business days after placement. With respect to planned placements, DCFS shall ensure that such information is communicated no later than 2 business days prior to the planned date the child will be placed.

b. By July 1, 1993, DCFS will ensure that any information relevant to caring for a child obtained by DCFS after the child has been placed, including any relevant information obtained as a result of the assessment process described in paragraphs 13-14, shall be communicated as soon as possible to that child's foster parent or caretaker and in no event later than 5 business days after DCFS obtains the information.

39. Development of Placement and Other Resources.

By July 1, 1994, DCFS will develop a sufficient number of placement and other resources of sufficient quality and variety to meet its obligations under this decree. The implementation plan and annual plans described in paragraphs 69-70 will describe the manner in which DCFS will meet this obligation. The resource development portion of the plans will include provision for at least the following:

a. Recruitment of sufficient numbers of foster homes to provide children with safe placements consistent with paragraph 36a;

b. Retention of foster parents in the system, including the provision of adequate foster parent training, adequate compensation for foster parents (reflective of the cost of caring for children), and adequate support services sufficient to sustain foster placements and provide children in foster placement with adequate care;

c. Development of sufficient number of therapeutic and specialized foster homes to permit DCFS to

provide appropriate placements for special needs children, including the development of expertise among the foster parent population;

d. Development of a sufficient number of residential placements of sufficient quality to assure that children whose best interests would not be served by placement in a less restrictive setting can be placed in a manner consistent with the provisions of this Decree;

e. Development of a sufficient capacity to assure that independent living programs are provided to children where appropriate; and

f. Development of other services and resources to meet the requirements of paragraph 17 above.

40. Automated Placement Resource System. By July 1, 1993, DCFS will implement a statewide automated placement resource system with the capability of identifying all current placement vacancies in substitute care, whether DCFS placements or private agency placements. All DCFS staff with responsibility for making placement decisions will have 24-hour access to this automated system. The system will contain information showing at least the license status of the provider, any limitations that the provider has expressed regarding children to be placed with the provider, and any special skills or experience of the provider that may be relevant in determining the suitability of a placement.

CASE RECORD AND INFORMATION SYSTEMS

41. Contents of Case Record.

a. By January 1, 1992, DCFS will convene a reform panel to review and recommend a revision of all case record forms in order to ensure that all necessary information is included in the case record. In addition, this review will recommend methods to eliminate wherever possible redundant or unnecessary forms or paperwork.

b. In addition to information specified elsewhere in this Decree to be included in the case record, each case record shall also include current available information as to the following:

(1) the child's and parents' names, ages and addresses;

(2) the names, ages and current addresses of any siblings of the child;

(3) the case plan and all prior case plans for the child;

(4) any substantive court orders in the juvenile court proceedings regarding the child;

(5) the caseworker and prior caseworkers and the dates they were assigned to and released from the case;

(6) the results of any assessment of the child and family;

(7) information describing any programs or services for the family or child provided in connection with the case plan; and

(8) record of all contacts by DCFS or the caseworker with the child, family and foster parent or other caretaker.

42. Automated Data Management System.

a. By July 1, 1994, DCFS will ensure that sufficient information is accurately and timely recorded in its automated data management systems to enable DCFS management to evaluate the Department. In reviewing and revising its automated data management systems to meet this obligation, the Department will convene a reform panel.

b. The automated data management system will, at a minimum, contain current information for each child's placement location, caseworker, parents' name and address (if known to DCFS) and identity and placement location of any siblings in DCFS custody. This minimum information shall be accessible to caseworkers within 15 minutes on a 24-hour basis.

43. Health Passport.

a. By July 1, 1993, DCFS will ensure that each child, in addition to the medical record described in paragraph 45 below, has a health passport, a copy of which accompanies the child to any placement and a copy of which is retained in the case record. The health passport shall contain at least the following information:

(1) the names and addresses of all past and current health providers treating the child (including those treating the child before entry into DCFS custody, to the extent such information is know to DCFS);

(2) summary of the child's initial health screening and comprehensive assessments as described in paragraphs 13-14 above;

(3) the parents' names and relevant medical history, if known;

(4) the child's current health condition, including any identified allergies;

(5) the child's immunization record, and a summary of the child's health, educational, functional and mental health history; and

(6) description of any medication, medical devices or equipment required.

b. The health passport shall be updated contemporaneously with each significant health development.

HEALTH CARE

44. Provision of Health Care for Children in Custody. In addition to the medical screening and assessments identified in paragraphs 13-14 above, by July 1, 1994, DCFS will ensure that all children are provided with regular health, dental, eye and hearing screenings in accordance with the accepted medical practice as currently exemplified in the EPSDT Standards. DCFS also will ensure that all children timely receive any medical treatment and all medically necessary equipment, supplies, medication and eyeglasses (including replacement eyeglasses) as are discovered or prescribed by any health assessment or screening.

45. Medical Records. In addition to the health passport described in paragraph 43 above, by July 1, 1994,

DCFS will ensure that a system exists for maintaining uniform, accessible current medical records for all children.

46. DCFS Health Service Management Unit.

a. By July 1, 1993, DCFS will establish a health services management unit to oversee health care services for children. The unit will be headed by a physician, and will be responsible for the implementation of the health screenings and services, medical records and health passport requirements, and for devising and monitoring the implementation of a strategy for the provision of an adequate supply of competent health care professionals sufficient to meet the needs of plaintiffs and to comply with the provisions of this Decree.

b. In addition to the overall responsibilities described in paragraph a above, this unit will be responsible for the following:

(1) consulting on an ongoing basis with the quality assurance and ombudsperson units to design and review mechanisms for those units to conduct quality assurance reviews and respond to complaints concerning the delivery of health services to children;

(2) evaluating DCFS's systems for the development and provision of services to medically complex children for the purpose of ensuring that such children receive adequate health care;

(3) ensuring that training programs provided by DCFS include appropriate clinical and health-related training;

(4) reviewing Department policies and procedures to ensure that such policies and procedures reflect professional clinical practice and judgment where appropriate; and

(5) preparing an annual report for the Director on health care programs and services for children.

c. The Unit shall have access to any information, including without limitation the case plans of individual children, necessary to accomplish the foregoing.

EDUCATION

47. Educational Assessment and Case Plan.

a. By July 1, 1993, DCFS will provide a basic educational assessment for all children entering DCFS custody, as part of the assessment described in paragraph 14 above. This educational assessment will identify the child's current school and grade. It will summarize the child's educational history, and will assess the child's educational needs (including preschool needs), secure sufficient information to determine the child's educational goals, and assess any identifiable educational problems. The educational assessment shall also include any additional testing, evaluations or screenings that may be appropriate; provided, however, that any special education needs shall be assessed and met in conformity with applicable state and federal law.

b. By July 1, 1993, the case plan for each child will include an education plan to assure that the child, while in DCFS custody, receives a public education of a

kind and quality comparable to the public education provided to children not in DCFS custody. This plan will identify the school in which the child is enrolled. If the child is not currently enrolled in school, the plan shall provide for when and how the child will be enrolled and how the child's educational needs will be met prior to such enrollment. The plan will also explain how the child's educational needs, goals and problems as identified in the educational assessment will be addressed; what, if any, services or other support will be needed; and how such services or support will be provided.

c. By July 1, 1993, the initial administrative case review shall include a review as to whether an education plan has been developed; whether the child is currently enrolled in school; if the child is not currently enrolled in school, the reasons such enrollment did not occur; and whether the basic educational assessment has been completed. The current educational status of the child, including the progress made on the education plan and any information from the child's teacher as to the child's current educational status will be reviewed at each subsequent ACR.

d. By July 1, 1992, DCFS will establish and implement policies in order to provide that, while in DCFS custody, children receive publish education of a kind and quality comparable to the public education received by children not in DCFS custody. These policies will include the following:

(1) Tutoring is not to be used in lieu of attendance at school except where indicated by

an exercise of judgment by an educational, psychological, developmental or medical professional.

(2) Children shall not be enrolled in a GED program in lieu of enrollment in a regular secondary school program.

(3) Children will not be deprived of planned family or sibling visitation or other family contact as punishment for school performance or for conduct at school.

(4) All children eligible for special education programs should receive the protections and due process provided under state and federal law, and children should not be classified as in need of special education with the protections and due process provided under state and federal law.

(5) DCFS will not classify children as being in need of special education, except to the extent that the child's assessments indicate the need for special education, and no child shall be placed in special education programs solely on the basis of his or her placement or the fact that he or she is in the custody or guardianship of DCFS.

(6) By July 1, 1993, DCFS will make reasonable efforts to ensure that all children are enrolled in school within two school days after entering DCFS custody or being moved to a new placement requiring a change in schools. In no event will any child remain unenrolled by DCFS for more than five school days.

(7) By July 1, 1993, if, when considering all of the circumstances, it would be in the child's best interest to keep the child in his or

her current school, DCFS will advocate with the appropriate school district or other appropriate governmental entity for the provision of transportation to maintain such a child in his or her current school. Where a change of school would cause serious educational or emotional harm to the child, DCFS shall assure the provision of transportation to maintain the child in his or her school.

48. Educational Records.

a. By July 1, 1993, individual case records shall contain current information concerning the child's school and progress in school, educational history, basic educational assessment and any subsequent assessments. School information shall be reviewed at each ACR. The specific form and content of the educational section of the case record will be determined as part of the case record review and revision described in paragraph 41 above.

b. By July 1, 1992, DCFS shall ensure that a current vaccination record is contained in each child's case record or health passport, and will ensure that this vaccination record is promptly available to personnel responsible for enrolling the child in school.

c. Upon entry of this Decree, DCFS will make reasonable efforts to overcome systemic obstacles or barriers that delay enrollment in school, such as transfer of records. These efforts may include seeking agreements with appropriate school districts or advocating for legislation.

49. School Activities.

a. By July 1, 1992, DCFS shall revise its policies and procedures to permit foster parents or other caretakers to provide consent for school activities, and shall advocate, if necessary, for changes in state or local school district policies to the same effect.

b. By July 1, 1992, DCFS shall develop a policy to assure that foster parents do not bear the financial burden of any reasonable charges associated with a child's education.

c. By July 1, 993, DCFS will develop and implement protocols defining (i) the way in which children are enrolled in school; (ii) participation by caseworkers, caretakers and parents in the child's school activities, evaluations, staffings, conferences and assessments; and (iii) assuring that appropriate notices of educational activities are provided to parents.

50. Pre-school Education. By July 1, 1992, DCFS will ensure that all caseworkers have access to a current and complete listing of publicly funded pre-school education programs and information as to the enrollment requirements for such programs. DCFS will ensure that children receive the same access to pre-school programs as would be available to pre-schoolers not in DCFS custody. In meeting this obligation, DCFS will assure that all children are enrolled in any pre-school programs available at no cost or nominal cost to DCFS.

51. Education Coordinator. By January 1, 1993, DCFS shall designate an Education Coordinator to oversee the provision of educational services to children,

including those relating to the implementation of this Decree. The Educational Coordinator will submit an annual report regarding the educational status of children in DCFS's care to the Director and the Monitor.

ADOPTION

52. Adoption Policies, Procedures and Protocols.

a. By July 1, 1993, DCFS will complete a review of all adoption policies, procedures and protocols and will promulgate revisions intended to reduce delays in identifying children for adoption; achieving termination of parental rights; identifying and approving adoptive families; and finalizing adoptions.

b. DCFS will convene a reform panel to perform this review and make recommendations regarding such revisions. This review will include at least the following subjects:

(1) the early identification of children for adoption;

(2) preparation of children for adoption;

(3) appropriate screening of new adoptive families, foster families who may wish to adopt and relative families who may wish to adopt for the purpose of assessing their suitability and adoptive homes;

(4) appropriate screening of the ability of potential adoptive families to meet and carry out a long term commitment to a child with special needs, and to seek and utilize support, training and resources needed to parent a child with special needs;

(5) transracial and transcultural placements;

(6) the preparation of adoptive homes;

(7) training programs for adoptive and foster families;

(8) legal risk placements;

(9) providing information regarding the child to adoptive families, including the opportunity to review the child's entire case record while protecting the privacy of the parents; and

(10) establishing a two-tier process for adoption approvals in which a potential adoptive home can be licensed for foster care initially with adoption certification as a separate process involving assessment of capacity for permanent care.

53. Efforts to Terminate Parental Rights. By July 1, 1993, in each case where it is necessary to free a child for adoption, DCFS will take all steps within its control to permit a petition to terminate parental rights to be filed within 75 days of the date on which adoption becomes the permanency goal for a child.

54. Recruitment of Adoptive Placements.

a. By January 1, 1993, DCFS will develop and implement a program to intensify its efforts to recruit adoptive parents and foster parents who wish to become adoptive parents, including adoptive parents whose racial, ethnic and cultural backgrounds are similar to those of children needing adoption. Foster parents who wish to be considered as potential adoptive parents shall receive, as part of their foster parent training, information

concerning both the role of foster parents in family reunification and the adoption process. Adoptive placement recruitment efforts shall include, where appropriate, public and private agencies and community groups.

b. By January 1, 1994, DCFS shall accept or reject a family's request to be approved as an adoptive family within 90 days from the family's application to DCFS.

55. Adoptive Subsidies. By July 1, 1992, DCFS shall standardize its practices on adoptive subsidies, and shall provide all potential adoptive families, including foster families, with complete and accurate information about the subsidy and other available post-adoptive services.

56. Post-placement and Post-adoptive Services.

a. By July 1, 1993, DCFS shall develop and implement protocols for post-placement adoptive services that will include how often an adoptive family is seen by the caseworker; ongoing assessment and identification of the family's service needs during the post-placement period; providing information and referrals for needed services; and, where appropriate, protocols regarding the implementation of open adoptions. DCFS also will make support groups available to adoptive families during the post-placement period.

b. By January 1, 1993, post-adoptive services, including family preservation services are defined in Ill. Rev. Stat. ch. 23, ¶2058.2, shall be made available, as appropriate, to DCFS adoptive families.

c. DCFS shall explore alternative funding mechanisms for post-placement and post-adoptive services, including federal funding sources.

LICENSING

57. Review and Revision of Licensing Requirements. By January 1, 1993, DCFS will complete a review of foster care and residential care licensing requirements and regulations and will establish revised licensing standards that reflect contemporary service models and promote the development of a broad range of resources while ensuring the safety and well-being of children in care. This review and revision process will include consideration of the use of certification procedures as an alternative to licensing studies, and review of the policies and procedures governing the relicensure of facilities, revocation of licenses, and the background, qualifications and training of professional staff. DCFS will appoint a reform panel to conduct this review.

58. Foster Home Studies.

a. By July 1, 1993, DCFS will implement a foster home study protocol consistent with national standards and will train licensing workers on the purposes, goals and uses of home studies. This protocol will provide that home studies will be performed before any foster parent applicant is referred for foster parent training.

b. By July 1, 1993, DCFS will ensure that the time from receipt by DCFS of an application to become a foster parent to a final decision on the application shall not exceed 75 days. In the event that an application

cannot be processed within 45 days for any reason, DCFS shall notify the applicant and explain the reasons for the delay and state whether the applicant has satisfactorily met the remaining approval standards.

TRAINING

59. Review and Revision of Training Programs. By January 1, 1993, DCFS will review and revise existing training programs and will implement new training curricula for DCFS caseworkers, supervisors and foster parents, that will conform to generally recognized standards and will provide information on and training in the areas identified elsewhere in this Decree, as well as substantive casework, protective services and child welfare skills needed to care for children and to otherwise implement this Decree; provided, however, that training regarding provisions of this Decree with an effective date after January 1, 1993 may occur within six months after that effective date. For direct service workers and supervisors, this will include initial and continuing classroom and on-the-job training. DCFS will convene a reform panel to perform this review and revision. Nothing in this paragraph will be construed to alter or extend any effective date in this Decree.

60. Training for Foster Parents. By January 1, 1993, DCFS will provide annual training for all DCFS foster parents and initial training for all new or prospective DCFS foster parents. The curricula will include training as to the role of foster parents in promoting the permanency goal of the child, including family reunification when that is the permanency goal for the child. Curricula

will also be developed for foster parents who have or are willing to take special needs children. Foster parents will be reimbursed for necessary and reasonable expenses, including transportation and child care, incurred in attending training sessions.

QUALITY ASSURANCE

61. Quality Assurance Unit.

a. By July 1, 1992, DCFS shall establish a quality assurance unit administratively independent of operations. The unit will evaluate the services and care provided by private agencies, foster parents and caretakers, case managers and DCFS staff to children and their families.

b. The quality assurance unit shall investigate reports of violations of state and federal law and DCFS rules and procedures made by individuals inside and outside of the Department and from any agency interested in child welfare. When a quality assurance investigation is prompted by a report, the reporter shall be notified as to the results of any such investigation within 90 days of the report.

c. In addition to performing the responsibilities assigned to it elsewhere in this Decree, the quality assurance unit shall perform at least the following functions:

(1) review selected and randomly chosen individual service plans and their implementation to test compliance with state and federal law and the terms of this Decree;

(2) conduct reviews of all private agency and DCFS operations sufficient to evaluate the quality of those operations;

(3) conduct mortality reviews; and

(4) monitor the disposition of unusual incident reports.

(d) Copies of all evaluations, reports and reviews by the Quality Assurance Unit, including any recommendations, shall be delivered to the Director, the Executive Deputy Director, and the individual or individuals with chief responsibility for operations. The Director shall initiate such action as is necessary and appropriate to address the issues raised in these evaluations, reports and reviews.

(e) The Quality Assurance Unit shall have access to all information and personnel necessary to perform its duties.

62. Abuse and Neglect Reports on Children in DCFS Custody. By July 1, 1992, the quality assurance unit shall be notified by the State Central Registry of all reports of abuse or neglect of children already in the custody or guardianship of DCFS by foster parents or caretakers, as set forth in paragraph 12 above, and shall be responsible for evaluating the investigation and disposition of such reports. The quality assurance unit shall submit a quarterly report on such abuse or neglect reports to the Director.

63. Complaints and Evaluations by Children, Parents, Foster Parents and Caretakers.

a. By July 1, 1992, DCFS will establish an ombudsperson unit to respond to complaints. By July 1, 1993, this unit will include a statewide toll-free telephone number to bring complaints to the attention of the ombudsperson or to obtain information. After July 1, 1993, this telephone number will be included in all appropriate notices and handbooks.

b. By January 1, 1993, DCFS shall not less than annually seek evaluations from children, their parents, foster parents and other caretakers as to the provision of services by DCFS. The Director shall assure that such evaluations are reviewed and appropriate changes, if any, are recommended to address issues raised by such evaluations.

64. Service Appeal. By July 1, 1992, DCFS will complete the revision of its service appeal process to assure that such appeals are prompt and fair. The revision will clarify the appeal rights of children, parents and foster parents; provide for a prompt mediation or alternative dispute resolution process; and provide notice to children and parents of their service appeal rights.

65. Children in Placement.

a. By July 1, 1993, DCFS shall ensure that an unannounced on-site review to ensure the adequacy of care is conducted every six months of all active DCFS and private agency foster care homes and annually for all residential placements.

b. By January 1, 1992, DCFS shall convene a reform panel to review and make recommendations regarding its policies and procedures concerning (i) the use of restraint and seclusion on children in care and (ii) the use of behavior-controlling drugs including prohibition on the use of such medication for the punishment of children, the convenience of caretakers or as a substitute for programming for children's needs.

MONITORING AND IMPLEMENTATION

66. Duties and Compensation of the Monitor. The Court shall appoint an independent and impartial monitor to evaluate and report upon implementation and compliance with this Decree. The duties of said monitor shall include, without limitation, identifying actual non-compliance with this Decree, facilitating the resolution of compliance issues without court intervention and recommending appropriate action by the Court concerning issues which cannot be resolved by discussion and negotiation among the monitor and the parties. In addition it shall be the duty of the monitor to identify and assist in resolving potential non-compliance issues.

a. The monitor shall have the authority to retain consultants for the purposes of advising the monitor in the fulfillment of his or her duties.

b. The monitor shall be compensated by defendant for his or her professional time and services and reasonable expenses, including all reasonable clerical, administrative and consulting support the monitor may require in the fulfillment of his or her duties. In order to assure timely and efficient performance of the monitor's

duties, within 30 days of the entry of this Decree the defendant shall deposit $175,000 in an interest bearing account to be administered by the monitor. The defendant shall thereafter make deposits into this account semi-annually in amounts required by the monitor not to exceed $175,000. These amounts are not intended to preclude the monitor from adequately performing his or her duties, and the monitor may request funds in excess of these amounts. In such circumstances the parties and the monitor shall attempt to reach an agreement as to an appropriate amount. If the parties and the monitor cannot reach an agreement, the monitor or either party may file a petition with the Court. The monitor shall report to the Court and the parties on the use of these funds on an annual basis commencing July 1, 1992.

67. Selection of the Monitor. The parties may agree on the identity of the monitor and may, within 30 days of the date of entry of this Decree, submit a joint nominee to the Court for appointment. In the event the parties cannot agree, within 21 days of entry of this Decree each party shall submit the name of one person together with a statement of the reasons the party supports the appointment of that person. The Court will appoint one of these two nominees or it may solicit additional nominees from the parties.

68. Change of Monitor. If prior to concluding his or her duties the monitor becomes unavailable to continue, or if the parties agree that he or she should be replaced, a new monitor will be selected jointly by the parties within 21 days of the notice that replacement will be necessary. In the event the parties cannot agree on a replacement

monitor, the same process described in paragraph 67 above shall be used to select a monitor.

69. Implementation Plan and Annual Plans. Within 120 days following the entry of this Decree, DCFS shall provide the monitor and class counsel for plaintiffs with an Implementation Plan. The Implementation Plan will describe the Department's actions necessary to fulfill the requirements of each provision of this Decree, including without limitation:

a. a description of the rules, protocols, forms or other directives or procedures to be drafted, reviewed or revised, the process for such drafting, review or revision, and a timetable that includes submission of drafts of such materials to the monitor and class counsel for plaintiffs 30 days in advance of publication or use;

b. a timetable for conducting the work of the reform panels identified in paragraphs 18, 29, 34, 41, 42, 52, 57, 59, and 65b, a description of DCFS's plans with respect to the issues addressed by such reform panels, and, to the extent applicable, a timetable for implementing those plans;

c. a description of necessary resource development activities, including actions, inter-agency agreements, RFP's, and timetables for the development of placement resources, medical resources, or any other resource necessary to implement this Decree;

d. a description of and timetable for the hiring, training and supervision of the personnel necessary to implement this Decree;

e. following discussions with the monitor, a description of the content and format of the information to be provided by DCFS to the monitor regarding compliance with the terms of the Consent Decree, as required by paragraph 73a below.

The Department may omit from the implementation plan a description of any or all of the foregoing items if additional information or experience is necessary before the Department can identify the means by which it will comply with a particular provision of this Decree. In that event, the Implementation Plan will describe the information or experience required; the methods the Department shall employ to secure the information or experience, including any evaluations, surveys, studies, or pilot programs; and a general description of timetables for formulating plans, policies or programs based on this information or experience.

70. Annual Plans. On March 31, 1992, and not later than March 31 of each year thereafter the Department shall provide the monitor and class counsel for plaintiffs with an Annual Plan describing in detail the specific actions the Department will undertake during the next fiscal year and setting forth the actions taken to date to comply with the Implementation Plan and this Decree.

71. Review of Implementation and Annual Plans. The monitor and the plaintiffs may raise any objections to the Implementation Plan and Annual Plans within 30 days of receiving them. If no objections to a plan are submitted by either the monitor or plaintiffs, the plan becomes final. If objections are submitted, the parties and

the monitor shall meet in an effort to resolve any disagreements regarding the contents of the plan. If, within 14 days from the receipt of any objections, the parties and the monitor are unable to reach an agreement as to the issues raised, the monitor, within 14 days after such an impasse has been reached, shall submit to the Court his or her recommendations as to the resolution of the disputed issue. The parties may submit within 7 days a response to the monitor's proposal. The Court will then determine the final contents of the plan.

72. Modification of Plans.

a. The Implementation Plan or an Annual Plan may be modified by DCFS whenever DCFS concludes that, despite its best efforts, (i) a provision of the plan has been or will be unsuccessful in achieving its objectives or the objective of the plan or this Decree; (ii) the provision while successful in achieving its specific objective also has or will have an unintended detrimental effect on other aspects of the child welfare system and DCFS has proposed a modification that will achieve the same objective and avoid the detrimental effect; or (iii) the provision is no longer the most effective means of achieving its objectives, either because the same level of compliance with this Decree can be achieved with less cost or because compliance can better be achieved for the same or less cost. Modification of any timetable or deadline in a plan may be allowed provided DCFS has made best efforts to meet the deadline or timetable and the proposed modification is consistent with the effective dates set forth in this Decree.

b. Proposed modifications consistent with this paragraph shall be submitted in writing by DCFS to class counsel for plaintiffs and the monitor 60 days prior to the proposed effective date for such modification. Such a proposal shall describe the proposed modification and explain the reasons for the modification. Plaintiffs' counsel and the monitor may raise any objections to the proposed modification within 20 days after receipt. If no objections to a proposed modification are submitted by either the monitor or plaintiffs, the modification shall be incorporated into the plan. If objections are submitted, the parties and the monitor shall meet in an effort to resolve any disagreements regarding the proposed modification. If, within 10 days from the receipt of any objections, the parties and the monitor are unable to reach an agreement as to the issues raised, the monitor, within 10 days after such an impasse has been reached, shall submit to the Court his or her recommendations as to the resolution of the disputed issue. The parties may submit within 5 days a response to the monitor's proposal. The Court will then determine whether the plan shall be modified and in what manner. The parties may agree to alter any of the deadlines set forth in this paragraph.

73. Monitoring Compliance with this Decree. The monitor shall receive from DCFS sufficient information to permit the monitor to evaluate the status of DCFS's compliance with this Decree and the monitor shall report his or her findings to the parties and the Court on a regular basis. The obligations will be discharged in the following manner:

a. Defendant shall provide information regarding compliance with this Decree, the Implementation Plan

and the Annual Plans to the monitor and class counsel for plaintiffs on a semi-annual basis commencing on September 30, 1992 (the "Semi-Annual Reports"). On or before July 1, 1992, the parties and the monitor will jointly develop a set of categories of measurable information to assist in evaluating the quality of care provided to children. To the extent possible, the monitor and the parties will endeavor to use these categories to develop standards to evaluate compliance with this Decree. The content and format of the Semi-Annual Reports shall be determined by the same process governing the development of implementation and annual plans set forth in paragraph 73a above, and shall, whenever appropriate, be designed to use and not to duplicate data, information, reports or quality assurance mechanisms already used by DCFS, required by state or federal law, or provided for under the terms of other court orders.

b. In addition to the Semi-Annual Report, but consistent with the considerations in subparagraph a, the monitor may at any time make reasonable requests for additional reports or information. DCFS shall ensure that the monitor shall have reasonable access to records and information of DCFS or any person or agency contracting with DCFS to provide care and services to children relating to the provision of services to class members. The monitor or his or her designee shall be permitted to interview privately, at reasonable times and places, any person, including plaintiffs, parents, foster parents, DCFS employees and persons providing services to class members. The consent of persons other than DCFS employees or officials shall be required before such interviews take place. The monitor shall be permitted to communicate *ex*

parte with the Court and with counsel for either party. The monitor and all persons providing clerical, administrative and consulting support shall be bound by the terms of the Protective Order entered in this case.

c. The monitor shall prepare and submit to the parties and the Court reports regarding compliance with this Decree. The first such report will be submitted no later than July 1, 1992. Subsequent reports will be submitted annually commencing January 1, 1993.

d. In the event that the monitor or the plaintiffs assert that the Department is or is likely to be out of compliance with any of the terms of this Decree, the Implementation Plan or an Annual Plan, they shall so notify the Department. Following receipt of such notice, the parties and the monitor shall meet in an attempt to reach agreement on the extent, if any, of noncompliance or likely noncompliance and to prepare a plan for achieving compliance. In the event the parties and the monitor agree on a plan for compliance, it will be submitted to the Court and, subject to the Court's approval, will be incorporated into this Decree. In the event agreement is not reached, plaintiffs or the monitor, together or separately, may seek compliance or any other appropriate relief from this Court. Where plaintiffs or the monitor conclude that the Implementation Plan or an Annual Plan previously approved pursuant to the provisions of paragraph 71 is inconsistent with the provisions of this Decree, the mere fact of such approval shall not preclude plaintiffs or the monitor from seeking relief under this paragraph.

e. As provided in paragraph 6 of this Decree, no class member is permitted to enforce this Decree based solely on isolated instances of non-compliance.

74. Terminating the Monitoring Process. The parties, jointly or separately, or the monitor may request termination of the monitoring process provided for in paragraphs 66-73 of this Decree at any time after June 30, 1999. The Court will grant the petition to terminate the monitoring process only if the following two conditions are met:

a. the defendant has fully achieved compliance with all of the provisions of this Decree and has maintained such compliance for a period of not less than 5 years; and

b. the Court determines that the defendant has implemented and is maintaining a system that complies with this Decree.

75. Modification of This Decree. Any party may petition the Court to modify the terms of this Decree. A party seeking modification will provide to the monitor and the other party a written description of the proposed modification and a statement of the reasons for the modification. The parties and the monitor shall attempt to agree on any proposed modification and, if such agreement is reached, shall jointly seek the approval of the Court for the proposed modification. If the parties and the monitor are unable to reach agreement, the party seeking modification may file a motion with the Court. Where defendant seeks modification of this Decree, the motion will be granted only if the Court finds that all of the following conditions are met:

a. defendant has attempted to comply with this Decree in good faith;

b. there has been a material and unforeseeable change in circumstances since the entry of this Decree; and

c. the proposed modification will further the purposes of this Decree.

76. Foreseeability. The parties acknowledge, without limitation, that the following circumstances are reasonably foreseeable at the time of entry of this Decree:

a. the incidence of abuse and neglect and the number of children in custody may increase or decrease in a manner materially consistent with historical experience;

b. the Department's budget and the budget of the State of Illinois may be subject to pressure and competing priorities;

c. the level of private, state or federal funding for the Department may increase or decrease;

d. the cost of food, shelter, clothing, medical care, psychiatric and psychological care, substance abuse treatment and other services may increase or decrease in a manner materially consistent with historical experience.

e. the Department and private agencies may confront difficulty in recruiting or retaining adequate numbers of foster parents;

f. the geographical location of children may result in substantial variations in the cost and availability

of professional and specialized services throughout the state;

g. other state agencies may refuse to enter into interagency agreements with the Department.

OTHER TERMS

77. Costs and Attorneys' Fees. Plaintiffs are entitled to their costs, expenses and reasonable attorneys' fees, although defendant reserves the right to contest the amount of those costs, expenses and fees. Plaintiffs may file an application for attorneys' fees within the time provided by Rule 46 of the General Rules of this Court. Plaintiffs may file a bill of costs within 90 days from the entry of this Decree or within such further time as the Court may allow.

78. Delivery of Notices or Mailings.

a. Delivery or mailings to plaintiffs shall be made to Michael Brody, Schiff Hardin & Waite, 7200 Sears Tower, Chicago, Illinois 60606 and Benjamin Wolf, Roger Baldwin Foundation of the ACLU, 20 E. Jackson Blvd., Suite 1600, Chicago, Illinois 60604.

b. Delivery or mailings to defendant shall be made to Sterling M. Ryder or his successor, General Counsel, Department of Children and Family Services, 405 E. Monroe, Springfield, Illinois 62701.

79. Resolution of Claims. This Decree shall constitute a final resolution of all claims, and only those claims, for injunctive and declaratory relief actually set forth in the Second Amended Complaint as amended as well as those claims ruled on by this Court in its Memorandum

Opinion and Order dated May 30, 1989 concerning the sufficiency of the [First] Amended Complaint. Because of the doctrine of *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984), plaintiffs could not have raised pendent state law claims. Therefore, no such state law claim is precluded by this Decree solely under principles of res judicata.

APPROVED:

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ENTERED:
/s/ John F. Grady
United States
District Judge

DATED: December 20, 1991